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No.

In The

Supreme Court of the United States

October Term, 2000

JOHN R. HAEGER,

Petitioner,

vs.

WONDA EDMOND, Child Support Receiver of DeKalb County, Georgia, *et al*

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the 11th Circuit conflict with other Circuits in its analysis and application of the "inextricably intertwined" clause of the *Rooker-Feldman* doctrine, as expressed by the 11th Circuit holding that "a determination that the state court denied . . . due process would necessarily call into question the judgment of a state court" ?

2. Does the 11th Circuit conflict with other Circuits in applying the *Rooker-Feldman* doctrine in a way that precludes parties whose due process claims it deems to be "inextricably intertwined" from obtaining declaratory relief under 28 U.S.C. § 2201 ? Or injunctive relief under 28 U.S.C. § 2202 ?

LIST OF PARTIES

JOHN R. HAEGER, JR.
Ms. WONDA M. EDMOND, The Alimony and Support Coordinator of DeKalb County,
DEKALB COUNTY, GEORGIA
Dr. TERESSA F. HAEGER
Ms. JEANETTE ROZIER, Clerk of the Superior Court of DeKalb County, Georgia
Honorable HILTON FULLER, former Administrative Judge, Fourth Judicial Administrative District of Georgia
Honorable DANIEL M. COURSEY, JR., former Administrative Judge, Fourth Judicial Administrative District of Georgia
Honorable ROBERT CASTELLANI, former Administrative Judge, Fourth Judicial Administrative District of Georgia
Mr. RICHARD JUGAR, Court Administrator, Fourth Judicial Administrative District of Georgia
Mr. JONATHAN WEINTRAUB, County Attorney, DeKalb County, Georgia
MS. KATHLEEN WASCH, Assistant County Attorney, DeKalb County, Georgia

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The opinion of the District Court (Appendix A) dated April 8, 1998, is unpublished.

The opinion of the Court of Appeals (Appendix A) dated November 23, 1998, is unpublished.

The opinion of the Court of Appeals (Appendix A) dated December 23, 1998, is unpublished.

The opinion of the Court of Appeals (Appendix A) dated September 27, 1999, is unpublished.

The opinion of the Court of Appeals On Petition(s) for Rehearing and Petitions(s) for Rehearing *en banc* (Appendix A) dated April 20, 200 may be published by notice in F.2d.

STATEMENT OF JURISDICTION

Certiorari is sought in review of orders of the 11th Circuit issued November 23, 1998, December 23, 1998, and September 27, 1999. The denial of rehearing by the Court of Appeals was entered on April 20, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The following items and extracts upon which petitioner relies are reproduced in Appendix E:

Section 1 of the Fourteenth Amendment to the U.S. Constitution

O.C.G.A. § 15-5-2 *et al* Establishing position of Administrative Judge

(Georgia) Uniform Rule of Superior Court 36.4 Pleadings must be signed by a party or an attorney

O.C.G.A § 5-6-35 Providing permission to Appeal order issued in matter of domestic law

Canon 3 of the Canons of Ethics of the Georgia Bar
An attorney's duty to assist in preventing Unauthorized Practice of law

(Georgia) Fourth Judicial Administrative District Administrative Order 86-1001
Establishing a Child Support Receiver as a Unit of the Administrative District

Fourth Judicial Administrative District publication "DEKALB COUNTY SUPERIOR COURT ALIMONY AND SUPPORT UNIT"
Stating policy that a child support recipient need neither appear nor engage an attorney to appear at a contempt hearing

O.C.G.A. § 15-19-50 *et seq* Defining practice of law; barring unauthorized practice; barring engagement of unlicensed practitioners

Canon 3B(7) of the Georgia Supreme Court's Code of Judicial Conduct
Barring ex parte communication

Canon 3B(9) of the Georgia Supreme Court's Code of Judicial Conduct
Barring comment that might affect the outcome of a case and requiring judges to enforce the bar on members of court personnel under their direction or control

O.C.G.A. § 15-15-(2)(a) Establishing a Child Support Receiver

O.C.G.A. § 15-15-4.1 Authorizing a Child Support Receiver to "bring an action."

STATEMENT OF THE CASE

A. MATERIAL FACTS

None of the Defendants are named as judicial officers: None of these Defendants appear to be eligible for judicial immunity for acts averred in the Complaint on the basis described in *Watts v. Burkhart*, 978 F.2d 269 (6th Cir. 1972)

Administrative Judge: O.C.G.A. § 15-5-2, 3, and 4 (See Appendix D) establish ten judicial administration districts, a district council composed of all judges of Superior Courts of a Circuit, and the position of Administrative Judge, elected by the Council of Superior Court Judges of the circuit. The Administrative Judge performs that function in additional to his regular trial court duties.

Thus each judicial circuit in Georgia maintains an administrative organization which shares the same boundaries as the Judicial Circuit, a Judicial Administrative District. A trial judge holds (as an additional duty) the (state) office of Administrative Judge. The Administrative Judge is the only officer of the District. Based on a reading of the state statute defining the duties and privileges of the office, O.C.G.A. § 15-5-5, the Administrative Judge appears to have no authority to perform judicial acts.

The Stone Mountain Circuit of Georgia operates a child support enforcement organization (the Alimony and Support Unit) established by Administrative order of the Administrative Judge and operating under the supervision of the Administrative Judge and his Court Administrator.

Dual Functions of Administrative/Trial Court Judge: As in both *Tumey v. State of Ohio*, 273 U.S. 510, 524, 47 S.Ct. 437, 441 (1927) and *Ward v. Village of Monroeville*, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972), the trial judge in the instant case performed dual functions. He was both a trial court judge and the Administrative Judge of the Fourth Judicial Administrative

District. As the Administrative Judge, he was the supervisor of the Child Support Receiver who prepared the income deduction order and (presumably) testified to him as to the existence of a (questionable) arrearage which should have been shown in order to justify the income deduction order.

Child Support Receiver: The position of Alimony and Child Support Receiver of DeKalb County is not a statutory position; it was established by the Administrative Judge of the Fourth Judicial Administrative District in Administrative Order 86-1001 (See Appendix D). In that Order, the Administrative Judge delegates to his statutory assistant, the Court Administrator, supervision of the Child Support Receiver for "administrative management" matters and (presumably) retains all other supervisory responsibilities.

Receiver is Supervised by Administrative Judge: DeKalb County has admitted in answer to a previous complaint (U.S. Supreme Court Docket 97-517, September 23, 1997) regarding the same practices and procedures that the Child Support Receiver of DeKalb County is a DeKalb County employee. The governing body of DeKalb County, Georgia, is a popularly-elected Board of Commissioners. The head of the Executive branch of DeKalb County government is a popularly-elected Chief Executive Officer (CEO). The County operates according to a Code of DeKalb County which permits the Board of Commissioners to act through the CEO.

An organizational result of establishment and supervision of the Child Support Receiver by Order of the Administrative Judge (a state officer) and his statutory assistant is that there is no supervisory chain running from the CEO to the Child Support Receiver through which the Board of Commissioners (the governing body) may act to impose policies upon the Child Support Receiver, an admitted County employee.

B. REVIEW OF STATE COURT JUDGMENT NOT SOUGHT.

The kernel of this Petition is whether or not a review of state court judgment is sought. Plaintiff, aware from a cursory reading of 42 U.S.C.A. 1983 that a state court judgment cannot be reviewed by a U. S. District Court, did not seek review or change to the order. Instead Plaintiff seeks damages and declaratory and injunctive relief against these non-judicial state actors to prevent continuing deprivation of due process (see "Fresh Violations" below). In opposition, and in a way that might not be argued by other Circuits, the 11th Circuit contends that "a determination that the state court denied . . . due process would necessarily call into question the judgment of a state court." (*Haeger v. Edmond*, Unpublished opinion, November 23, 1998, 11th Cir).

Plaintiff will argue that, if the District Court opinion had been issued and appealed to a different Circuit, this contention would not be raised by a different Circuit Court.

The state court judgment of which the 11th Circuit argues Plaintiff seeks review was issued June 30, 1995.

Federal Issues Raised:

In light of the review sought before this Court–which hinges on the question of whether a review of a state court judgment is sought--the following information is provided.

Federal questions relevant to this Petition were raised in the Complaint filed in U.S. District Court alleging deprivation of due process of law in the following ways:

1) Unlicensed practice of law by the Child Support Receiver in preparing papers incident to an action in court (motion for contempt and order)(See O.C.G.A. § 15-19-50, Appendix D),

2) Lack of notice to Plaintiff of hearing to consider issuance of a state court order

3) Administrative Judge's failure to train his supervisee Child Support Receiver in according due process of law

4) Deprivation of a hearing free of impropriety: The Child Support Receiver (who is not an attorney) presented an order to the trial judge (who was also the Administrative Judge, her supervisor) without a hearing.

5) Failure of Administrative Judge (a member of the Georgia Bar) to "assist in preventing unlicensed practice of law" in violation of the Code of Ethics of the State Bar of Georgia (See Appendix D), a "*Roth*" understanding.

6) Failure of an Administrative Judge to prevent a court staff member under his control or direction from speaking publicly in a way that might affect the outcome of a case in violation of Georgia's Code of Judicial Conduct (See Appendix D). When it suits the Georgia Supreme Court's purpose, the relevant Canon 3 of the Code of Judicial Conduct is applied although not cited, see *Slakman v. The State*, S00A0027, Ga. Supreme Court, July 14, 2000 (http://www2.state.ga.us/Courts/Supreme/op000714.htm#0714)

Federal questions were raised in an appeal filed April 6, 1998 in the 11th Circuit Court of Appeals alleging deprivation of due process of law in the following ways:

1) Plaintiff sought *de novo* review of the Complaint, the only pleading that should have been at issue

2) Deprivation of liberty and property interests without notice or hearing

3) failure to examine a *pro se* civil rights complaint to determine:
   a) whether the facts alleged or the set of facts which Plaintiff might be able to prove could provide the basis for recovery under any of the Civil Rights acts or
   b) whether Plaintiff presented Constitutional issues which Plaintiff may have perceived dimly, or articulated faintly or inartfully.

4) District Court's dismissal whose basis is "reasons well stated in defendants' brief"

5) Award of attorney's fees in the absence of discovery and in the absence of any indication that even a single averment contained in Plaintiff's Complaint is false

6) District Court's finding, that "three times Plaintiff has sought review of state divorce decisions," is at odds with Plaintiff's pleas for relief in this and the two other complaints (*Haeger v. Edmond*, 11th Cir. 96-8749 (U.S. Supreme Court Docket 97-517) and *Haeger v. Sullivan*, 11th Cir. 96-8928 (U.S. Supreme Court Docket 97-1119))

7) District Court finding that this case shares the same core facts with the above-mentioned two prior complaints, is at odds with Plaintiff's averments in this and the two other complaints ?

Deprivation of a Hearing - Supervisee and Supervisory Acts: (p 16)

Federal Jurisdiction in Court of First Appeal:

Jurisdiction for appeal of the District Court's order arose from 28 U.S.C. § 1291.

C. THE STATE COURT PROCEEDING

Income Deduction Order Issued Without Notice or Hearing: In June, 1995, the child support receiver prepared, and the trial judge (who was also the Administrative Judge and her supervisor) signed, an income deduction order without notifying Plaintiff (or, to judge by a retrospective review of the judge's calendar, holding a hearing).

D. ATTEMPTS TO OBTAIN RELIEF

Application to the Georgia Court of Appeals: Plaintiff sought to appeal the order in the Georgia Court of Appeals. Appeals of Georgia Superior court orders issuing from domestic law are discretionary. Plaintiff's application for appeal was denied.

Complaint in U.S. District Court: Plaintiff filed the instant Complaint in U. S. District Court

Appeals to the 11th Circuit: Plaintiff appealed two partial dismissals by the U. S. District Court to the 11th Circuit. Plaintiff appealed to the 11th Circuit award of attorney fees based on District Court determination that Complaint was frivolous.

Suggestion of Rehearing *en banc*: Plaintiff, in his suggestion, proposed to the 11th Circuit a comparison with the *Tindall* opinion emanating from a District Court of the 6th Circuit. In denying rehearing, the 11th Circuit gave no indication of consideration of *Tindall* or its relevant 6th Circuit opinions.

The factual errors in these brief opinions of both the District and Appeals Courts are so numerous as to suggest the need to include a copy of the Complaint in this petition (See Appendix B). In the context of *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99., the averments of the Complaint should be at center stage, not restatement of the Complaint by the various Defendants and courts.

As an example or restatement, none of the Defendants are judicial officers acting in judicial roles. Only three Defendants have any role involving judicial acts in any capacity at all; and those three are all named in their role as an Administrative Judge, a state officer with no trial duties.

As a second example, Plaintiff has never before brought this nexus of operative fact before any Federal court before filing this Complaint.

REASONS FOR GRANTING THE PETITION

Conflict with Other Circuits

"Inextricably intertwined" interpretation: 11th Circuit opinions in this case showcase an extraordinarily simplistic application of the "inextricably intertwined" test of the *Rooker-Feldman* doctrine. The November 23, 1999 opinion in the instant case (See Appendix A) expresses the 11th Circuit position unequivocally in its holding that "a determination that the state court denied . . . due process would necessarily call into question the judgment of a state court." This overly simplistic approach is in conflict with other Circuits.

In stark contrast, the 9th Circuit in *Dubinka v. Judges of Superior Court*, 23 F.3d 218 (9th Cir. 1994), citing *Ratazos v. Colorado Supreme Court*, 746 F.2d 1429,1433 (10th Cir. 1984), *cert denied*, 417 U.S. 1016, 105 S.Ct 2019, 85 L.Ed.2d 301 (1985), held that a

> ". . . (district court may determine whether state rules violate due process without reviewing the decision of state supreme court). Therefore the district court did have subject matter jurisdiction to hear appellants' facial challenges to the constitutionality of Proposition 115."

At least the *Ratazos* and *Dubinka* courts were graced with state statutes and state rules against which to apply *Rooker-Feldman* analysis. The instant Complaint concerns unwritten procedures of a non-statutory appendage of a Georgia Judicial Administrative District. And the damage to Plaintiff was a direct result of permitting unlicensed practitioners, supervised by an Administrative Judge, to engage in the practice of law in violation of state statute the Code of Ethics of the Georgia Bar, and the Georgia Supreme Court's Code of Judicial Conduct.

Even the 11th Circuit "has recognized an 'important limitation' on the *Rooker-Feldman* doctrine when the plaintiff had no 'reasonable opportunity to raise his federal claim in state proceedings.' In that situation, we consider that the federal claim was not 'inextricably intertwined' with the state court's judgment. *Id. Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir. 1983), *cert. denied*, 467 U.S. 1210, 104 S.Ct. 2398, 81 L.Ed.2d 355 (1984)" as cited in *Powell v. Powell*, 80 F.3d 464 (11th Cir 1996). *Powell* is relied upon in the 11th Circuit's opinion dated September 27, 1999 as justification for its holding that "a determination that the state court denied . . . due process would necessarily call into question the judgment of a state court."

The instant Complaint avers deprivation of notice and hearing in that precise way described in *Wood*. No hearing means that the Plaintiff had no opportunity to raise federal claims.

"Inextricably intertwined" dismissal precludes relief under 28 U.S.C. § 2201, 2202: An effect of the 11th Circuit's overly simplistic "inextricably intertwined" analysis is a short-circuiting of the path to dismissal, thus preventing (in general and in the instant case in particular) consideration of the provisions for injunctive and declaratory relief established by 28 U.S.C. § 2201 or 2202. This short-circuiting results in deprivation of a form of review that is provided in the 6th Circuit, *Martin-Marietta Corp. v. Bendix Corp.* 690 F.2d 558,562 (6th Cir. 1982) and an opinion of this Honorable Court, *Mitchum v. Foster* 407 U.S. 225, 242 (1972).

As noted in *Tindall*, this Honorable Court "in *Mitchum v. Foster* 407 U.S. 225, 242 (1972), found that Section 1983 is an explicit exception to the anti-injunction statute. The Sixth Circuit expressly adopted those Supreme Court findings in *Martin-Marietta Corp. v. Bendix Corp.* 690 F.2d 558,562 (6th Cir. 1982)."

In *Tindall*, the district court went on to find absolute immunity for the judicial officers involved. In the instant

Complaint however, only three defendants are judicial officers. And each of those three held (in different time periods relevant to the Complaint) dual roles, both as trial judges and as Administrative Judges. None of those three are named in their capacity as trial judges, a fact only recently acknowledged by the 11th Circuit in its opinion of September 27, 1999, page 2. They are named as Administrative Judges, and, barring an expansive interpretation of the Georgia implementing statute O.C.G.A. § 15-5-5, Administrative Judges have no duties whatsoever which appear to involve judicial acts.

This 11th Circuit shortcut to dismissal for any complaint alleging deprivation of due process in a judicial hearing eliminates, to a great extent, the need to consider most claims of deprivation of due process. And it places the 11th Circuit at odds with opinions of the 9th and 10th Circuits, *Dubinka v. Judges of Superior Court*, 23 F.3d 218 (9th Cir. 1994), *Ratazos v. Colorado Supreme Court*, 746 F.2d 1429 (10th Cir. 1984) and of this Honorable Court, *Jackson v. Virginia*, 443 U.S. 307 (1979).

The exceptionally brief 11th Circuit opinions in this case contrast sharply with the thoughtful and scholarly opinion of the Michigan District Court in *Tindall v. Wayne County Friend of the Court*, 98-CV-73896-DT (E.D. Mich.1999). That opinion is well-supported by 6th Circuit opinions.

Tindall contains a discussion of the legislative intent of the Federal Courts Improvement Act of 1996, citing language that distinguishes the intent of the statute in restoring "the doctrine of judicial immunity to the status is occupied prior to the Supreme Court's decision in Pulliam v. Allen, 466 U.S. 522 (1984)."

However, as Plaintiff has pointed out on several occasions in attempts to seek relief, no state actors are named in their capacity as trial judges nor are any judicial acts challenged. This case involves judicial officers acting in ministerial capacities and non-

attorney supervisees of judicial officers acting in ministerial and (unfortunately) prosecutorial capacities.

District Court sanction of Plaintiff's alleged frivolous Complaint was affirmed by the 11th Circuit. In that affirmation the 11th Circuit noted that Plaintiff "was put on notice that the district court lacked subject-matter jurisdiction over due process claims arising from child-support proceeding that would call into question the propriety of the issuance of the income deduction order." (September 27 order, pp6-7, 11th Cir. 1999)

This line of reasoning reinforces the notion that this 11th Circuit short-circuiting of due process analysis is not an anomaly, but business as usual. To the extent that this short-circuit constitutes a regular practice in the 11th Circuit, the need for review is greater.

The Stone Mountain Circuit of Georgia operates a child support enforcement organization established by Administrative order of the Administrative Judge and operating under the supervision of the Administrative Judge and his Court Administrator. In terms of preventing the appearance of impropriety and bias, this organizational structure may be ill-advised. Nevertheless, other Georgia Judicial Administrative Districts operate similar organizations. The others operate under the provisions of O.C.G.A. § 15-5 but the appearance of impropriety is similar. The potential for enmeshing trial court judges in violations of *Roth* understandings such as state statutes, Canons of Ethics of the Georgia Bar, and the Georgia Supreme Court's Code of Judicial Conduct, and supervisory improprieties exist for any child support enforcement organization with employees who appear to be members of court personnel.

This case concerns a child support payer who was and had been current. That payer was unconstitutionally abused by an unlicensed and unknowledgeable practitioner running amok within

several areas of law: civil practice, domestic law, commercial paper, and debtor/creditor; areas of practice fraught with legal complexities that should be handled by a knowledgeable practitioner.

These unlicensed DeKalb County practitioners remain secure in the knowledge that the political correctness of their activity will protect them from the consequences of their actions.

Fresh Violations of the Same Georgia Due Process "Roth" Rules and Understandings: The Fourteenth Amendment to the U.S. Constitution provides that no state shall "deprive any person of life, liberty or property without due process of law." And, this Honorable Court has held that, "Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions defined by existing rules or understandings that stem from an independent source such as state law--rules or understandings that secure certain benefits and that support claims of entitlement to those benefits," *Board of Regents of State College v. Roth*, 408 U.S. 563, 92 S.Ct. 2701. Plaintiff asserts his property interest in an expectation that an attorney will conduct him or herself so as to comply with the Canons of Ethics of the Georgia Bar and that a judge will go beyond that to comply with the Georgia Supreme Court's Code of Judicial Conduct.

Defendants' have succeeded in defending against Plaintiff's first complaint (false accusation of failure to pay) (U.S. Supreme Court Docket 97-517, September 23, 1997). They have succeeded thus far in defending against this second Complaint (income deduction order issued without notice or hearing). And these state actors remain confident that, even in violating these Roth "rules and understandings," they will remain protected by the Federal

judiciary and may continue to do business in the same way at the same stand.

One unfamiliar with the excesses of Georgia child support enforcement might suppose, after Plaintiff's two Federal complaints detailing these improper procedures, that the DeKalb County Child Support Receiver might apply special attention to the manner of according due process (even if only as accorded this one Plaintiff).

To the contrary, in 1999, Defendant Honorable Robert Castellani permitted his supervisee, JoAnne Berry (the Administrative Judge's supervisee, a Bar member and a member of court personnel) to advocate against Plaintiff in opposing reduction of the amount of Plaintiff's income deduction order to conform to the then-current obligation.

The occasion for Plaintiff's request for reduction was the expiration of Plaintiff's monthly support obligation for his eldest child. The reduction in obligation was automatic; only the income deduction order needed be changed to reflect the new lower obligation amount.

The income deduction order, issuance of which is the topic of this Complaint, was issued in perpetuity and resulted in overwithholding. Ms. Berry traveled to Plaintiff's attorney's office to negotiate whether the amount overwithheld should be applied to future obligations (as Plaintiff had requested) or retained as boot to the recipient. Plaintiff noted, by letter to Defendant Castellani, Canon 3 of the Code of Judicial Conduct and its proscription against statements by members of court personnel. The order proposed by Ms. Berry (a member of court personnel) was selected for issuance by Defendant Castellani.

In this Complaint, Plaintiff seeks review of the manner in which due process was accorded. In addition, Plaintiff seeks, through declaratory and injunctive relief to improve the manner in which due process of law is accorded to Plaintiff and other child-support-related defendants in DeKalb County, Georgia, and in the 11th Circuit.

Against Plaintiff's first complaint involving a hearing before a trial judge who was also the Administrative Judge and who permitted his supervisee to engage in the unlicensed practice of law in his courtroom (see D.C. Opinion, September 10, 1997), the District Court invoked the *Rooker-Feldman* doctrine like talisman—her only explanation misstated the Rooker-Feldman doctrine, modifying the bar to review of "state court judgment" to a bar to review of "state court procedure." Plaintiff filed this second Complaint alleging almost all of the same systematic deprivations plus deprivation of notice and hearing in an entirely new nucleus of operative fact. The District Court dismissed that Complaint without comment on the state court's deprivation of Plaintiff's liberty and property interests without notice or hearing.

In Plaintiff's first Complaint, the 11th Circuit affirmed the District Court's opinion that the violations of clearly established law occurred in the context of a "state court proceeding" and therefore subject matter jurisdiction was barred by the *Rooker-Feldman* doctrine. No citation of decisional law was offered for this extension of *Rooker-Feldman* either in the District Court's opinion or in its affirmation.

This 11th Circuit interpretation of the concept that a due process complaint in conjunction with a state court judgment is "inextricably intertwined with a state court proceeding" *per se* if a

plaintiff alleges deprivation of due process is at odds with the interpretations of other Circuits, e.g., the 9th, and 10th Circuits. The 11th Circuit chose to hide the light of its novel opinion under a bushel by twice declining to publish this conflicting interpretation of the *Rooker-Feldman* doctrine. If this ruling were to be published, it would establish a clear-cut inter-Circuit conflict. The 11th Circuit should not be permitted to issue (and avoid review of) opinions which deviate so markedly from those of other Circuits under the cover of a "do not publish" stamp. If this interpretation were to accepted nationally, the *Rooker-Feldman* doctrine would preclude subject matter jurisdiction in all complaints alleging deprivation of due process of law in the context of a state court proceeding.

CONCLUSION

The 11th Circuit position which states unequivocally that "a determination that the state court denied . . . due process would necessarily call into question the judgment of a state court," is not in consonance with sister circuits nor with that of this Honorable Court. *Rooker-Feldman* analysis within the 11th Circuit should be rationalized so as to conform to that of other Circuits and to that of this Honorable Court.

This case offers an opportunity to rationalize due process analysis in the context of notice and hearing in child support enforcement actions among the 6th, 9th, 10th and 11th Circuits and, in the process, bring 11th Circuit thinking closer to that of this Honorable Court.

In so doing, this court can restore to 11th Circuit litigants the possibility of obtaining declaratory and injunctive relief in conjunction with claims of deprivation of due process as provided in 28 U.S.C. § 2201, 2202.

Plaintiff offers this Honorable Court the opportunity to establish the principal that, like Son of Sam, Wayne Williams, David Dellinger, and Ted Bundy, child support payers are entitled

to an expectation of civil rights no less than those accorded to any other party to a legal proceeding conducted in accordance with U.S. Constitutional guarantees.

This case offers an opportunity to establish the primacy of Constitutional jurisprudence in the manner in which state actors in the 11th Circuit comply with state statutes in according due process of law to child support payers.

It offers an opportunity to reiterate the importance of separation of powers in a tripartite system of government, and especially in the manner of separating child support enforcement from the judiciary.

Although the opinions of this Honorable Court reiterating a defendant's right to notice and hearing are legion, there appears to be no opinion of this Court focusing specifically on the requirement to accord due process in child support proceedings. This petition offers this Honorable Court the opportunity to address due process in that context.

To the extent that the Federal judiciary would attempt to stand above the sordid mess that child support enforcement has become, avoiding the issue will not bring improvement. Without question, advocates of stronger and stronger enforcement will continue to raise the battle cry of "Judicial Efficiency." But, to the extent that "stronger enforcement" and "judicial efficiency" is effected through deprivation of simple due process of law, unreviewed by an unwilling Federal judiciary, the excesses committed in the name of child support enforcement will just as surely undermine our nation's trust in the ultimate defender of our rule of law, our judiciary.

As a matter of institutional self-protection, as a matter of protecting the perceived integrity of the Federal judiciary, these excesses which are defended by the Northern District of Georgia and the 11th Circuit deserve review by this Honorable Court.

Plaintiff offers this Court the opportunity to emphasize the well-considered opinion in *Tindall* and to reiterate that the body of Constitutional law as to notice and hearing, developed over more than two hundred years, applies to state child support proceedings no less than to any other area of civil law.

Respectfully submitted,

John R. Haeger, Jr.
5464 Laurel Lane
Lilburn, Georgia 30047
770 717 1885

July 19, 2000

Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOHN R. HAEGER, JR.,
Plaintiff

v. NO. 1:97-CV-1862-JEC

MS. WONDA EDMOND, Child Support Receiver of DeKalb County, et al,
Defendants

ORDER

This case is before the Court on defendants' Motion To Dismiss [3]. This is plaintiff's third complaint before this Court. In all three complaints, he has alleged a variety of claims that express his displeasure with the ramifications of divorce and child support litigation that occurred in DeKalb County several years ago. On May 31, 1996, this Court issued a 22 page order dismissing plaintiff's complaint. *Haeger v. Edmond, et al.*, 1:96-CV-0049 JEC. The short reason for the Court's dismissal was its lack of jurisdiction, as a federal court, to review state divorce litigation decision. Thereafter, on July 3, 1996, in *Haeger v. Sullivan, et al.*, 1:96-CV-214 JEC, this Court likewise, dismissed a similar complaint, for the same reasons.

Now, plaintiff has filed a third complaint arising out of the same core facts. For the reasons well stated in defendant's brief, the Court **DISMISSES** plaintiff's complaint. The court **GRANTS** defendants' request for an award of attorneys' fees, pursuant to 42 U.S.C. § 1988. Not only are plaintiff's claims frivolous, but he has been told so by this Court on two previous occasions. The Court directs defendants to file a memorandum detailing their fees and expenses within thirty (30) days of this Order.

SO ORDERED, this 10 day of September, 1997.

Appendix A

JULIE E. CARNES
UNITED STATES DISTRICT JUDGE

Appendix A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 97-9135
Non-Argument Calendar

D.C. Docket No. 1:97-CV-1862-JEC

John R. Haeger,
Plaintiff-Appellant,

versus

WONDA EDMOND, Child Support Receiver of DeKalb County; DEKALB COUNTY, GEORGIA; TERESSA F. HAEGER, Dr.;LINDA REEVES, FORMER Clerk of the Superior Court of DeKalb County; JEANNETTE ROZIER, Clerk of the Superior Court of DeKalb, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Georgia

---

(November 23, 1998)

Appendix A

Before ANDERSON, EDMONDSON, and DUBINA, Circuit Judges

PER CURIAM:

John R. Haeger appeals the dismissal of his pro se action asserting civil rights claims, 42 U.S.C. § 1983, and supplemental state law claims, 28 U.S.C. § 1367. The claim arises from state court proceedings about child-support payments. Haeger did not file a notice of appeal from the district court's order dismissing the claims against DeKalb Judges Castellani, Coursey, and Fulleer and his ex-wife, Teressa Haeger. Therefore this court cannot review Haeger's claims as to these defendants. The district court properly dismissed Haeger's claims against the remaining defendants for lack of subject matter jurisdiction under the Rooker-Feldman doctrine: a determination that the state court denied Haeger due process would necessarily call into question the judgment of a state court.

Appendix A

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FILED DECEMBER 23, 1998

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 98-8624

John R. Haeger,
Plaintiff-Appellant,

versus

WONDA EDMOND, Child Support Receiver
of DeKalb County,
DEKALB COUNTY GEORGIA, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

Before ANDERSON, EDMONDSON, and DUBINA, Circuit Judges

BY THE COURT:

This appeal is dismissed in part for lack of jurisdiction. This appeal is DISMISSED as premature to the extent that the appellant challenges the district court's April 7, 1998, determination that the state defendants are entitled to an award of attorney's fees and costs. The district court has not yet determined the amount to be awarded to the state defendants, and thus has not entered a final, appealable decision on that issue. See Interstate Pipe Maintenance, Inc. v. F.M.C. Corp. 775 F.2d 1495, 1497 (11th Cir. 1985); Fort v. Roadway Express, Inc., 746 F.2d 744, 747-749 (11th Cir.1984); see also Knight v. Alabama, 14 F.3d 1534, 1540, 1540 n.1 (11th Cir. 1994).

The appeal MAY PROCEED, however, to the extent that appellant challenges the district court's April 7 final order dismissing this action against the remaining defendants. See 28 U.S.C. § 1291. Also, it MAY PROCEED to the extent the appellant challenges the district court's final order awarding attorney's fees and costs to the DeKalb County defendants.

Appendix A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-8624
Non-Argument Calendar

D.C. Docket No. 97-01862-1-CV-JEC

John R. Haeger,

Plaintiff-Appellant,

versus

WONDA EDMOND,
Child Support Receiver
of DeKalb County,
DEKALB COUNTY
GEORGIA,
DR. TERESSA
HAEGER,
LINDA REEVES,
former Clerk of the
Superior Court of
DeKalb County,
JEANNETTE ROZIER,
Clerk of the Superior
Court of DeKalb
County, *et al.*,

Defendants-Appellees.

Appendix A

Appeal from the United States District Court
for the Northern District of Georgia

(September 27, 1999)

Before EDMONDSON, BLACK, and CARNES, Circuit Judges

PER CURIAM:

John Haeger appeals the district court's conclusion that it lacked subject matter jurisdiction over his case and its grant of attorney's fees to certain of the defendants. Because we find no error, we AFFIRM the ruling of the district court.

BACKGROUND

Plaintiff, John R. Haeger, brought this action against eleven defendants–administrative judges (the "judicial defendants"), DeKalb county officials and DeKalb County (the "DeKalb defendants"), and his ex-wife, alleging that the procedures used in an underlying child support dispute had violated his constitutional rights and seeking declaratory, injunctive and monetary relief.

The district court dismissed the DeKalb defendants upon concluding that, pursuant to the Rooker-Feldman doctrine, it was without jurisdiction to hear plaintiff's claims. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); Powell v. Powell, 80 F.3d 464 (11th Cir. 1996). The district court also granted defendants request for attorney's fees pursuant to 42 U.S.C. § 1988 and instructed defendants to submit a memorandum detailing their fees and expenses.

Before the DeKalb defendants filing of a fee memorandum, plaintiff appealed to this Court. We determined that, as the amount of attorney's fees was still uncertain, the appeal was premature for the award of attorney's fees. We did, however, affirm the district court's

order dismissing the claims against the DeKalb Defendants for lack of jurisdiction.

Later, in district court, the DeKalb defendants submitted a memorandum detailing their fees and expenses. In addition, the judicial defendants and Teressa Haeger moved to dismiss the claims against them. And, the DeKalb and judicial defendants moved for Rule 11 sanctions against plaintiff.

In an order dated 7 April 1998, the district court (1) dismissed, pursuant to the Rooker-Feldman doctrine, plaintiff's claims against the judicial defendants and Teressa Haeger, (2) approved the DeKalb defendants' fee memorandum, (3) denied the DeKalb defendants' motion for Rule 11 sanctions and (4) granted the judicial defendants motion for Rule 11 sanctions and limited the sanctions to the amount of the judicial defendants' attorney's fees and costs. As was the case with the DeKalb defendants' motion for attorney's fees, the court directed that the judicial defendants submit a memorandum detailing their attorney's fees and expenses. Prior to their doing so, plaintiff appealed to this Court.

Because the award of attorney's fees to the judicial defendants was not yet a final order, we, in an order dated 23 December, 1998, limited the scope of the present appeal to (1) the dismissal of the judicial defendants and Teressa Haeger, and (2) the grant of the DeKalb defendants' motion for attorney's fees under 42 U.S.C. § 1988.

DISCUSSION

This court reviews a dismissal for lack of subject matter jurisdiction de novo. See Woodruff v. United States Dep't of Labor, 954 F.2d 634, 636 (11th Cir. 1992).

As noted above, the district court determined that it was without subject-matter jurisdiction over plaintiff's claims due to the Rooker-Feldman doctrine. We have already affirmed the dismissal of the DeKalb defendants; and, for reasons stated in that opinion, the district court's dismissal of the judicial defendants and Teressa Haeger was also proper.

Plaintiff also alleges that the district court erred in granting

attorney's fees to the DeKalb defendants pursuant to 42 U.S.C. § 1988. We review for an abuse of absolute discretion. See American Civil Liberties Union v. Barnes, 168 F.3d 423, 427 (11th Cir. 1999).

Under 42 U.S.C. § 1988, a prevailing defendant is entitled to recover attorney's fees if the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in bad faith. See Baker v. Alderman, 158 F.3d 516, 524 (11th Cir. 1998).

Haeger argues that the present complaint had different facts, legal theories, and defendants than his previous complaint and, therefore, was not frivolous. The district court dismissed Haeger's earlier complaint because his due process claims arising from the issuance of the income-deduction order wre inextricably intertwined with the state court proceeding. We affirmed the district court's dismissal. At that time, Haeger was pur on notice that the district court lacked subject-matter jurisdiction over due process claims arising from child-support proceeding that would call into question the propriety of the issuance of the income deduction order.

The theories raised in the instant case, if successful, would undermine the validity of the income-deduction order. Thus, the district court was without jurisdiction to hear plaintiff's claims. Haeger was on notice of this lack of jurisdiction and, accordingly, his complaint was frivolous. Therefore, the district court's award of attorney's fees was not abuse of discretion.

The district court did not err by dismissing the judicial defendants nor did it abuse its discretion by awarding attorney's fees to the DeKalb defendants. Therefor, the order of the district court is AFFIRMED.

AFFIRMED.

Appendix A

(Filed April 20, 2000)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-8624-FF

JOHN R. HAEGER,JR.,

Plaintiff-Appellant,

versus

WONDA EDMOND,
Child Support
Receiver of DeKalb
County,
DEKALB COUNTY
GEORGIA,
DR. TERESSA F.
HAEGER,
LINDA REEVES,
former Clerk of the
Superior Court of
DeKalb County,
JEANNETTE ROZIER,
Clerk of the Superior
Court of DeKalb
County, *et al.*,

Defendant-Appellees.

Appendix A

Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND SUGGESTIONS(S) OF REHEARING EN BANC (Opinion _____, 11th Cir., 19___, _____ F. 2d _____).

Before EDMONDSON, BLACK and CARNES, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

_____(J L Edmondson)_____
UNITED STATES CIRCUIT JUDGE

Appendix A

(Filed April 20, 2000)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-8624-FF

JOHN R. HAEGER,JR.,

Plaintiff-Appellant,

versus

WONDA EDMOND,
Child Support
Receiver of DeKalb
County,
DEKALB COUNTY
GEORGIA,
DR. TERESSA F.
HAEGER,
LINDA REEVES,
former Clerk of the
Superior Court of
DeKalb County,
JEANNETTE ROZIER,
Clerk of the Superior
Court of DeKalb
County, *et al.*,

Defendant-Appellees.

Appendix A

Appeal from the United States District Court
for the Northern District of Georgia

Before EDMONDSON, BLACK and CARNES, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by Appellant John R. Haeger, Jr. is DENIED.

ENTERED FOR THE COURT:

___(J L Edmondson)_____
UNITED STATES CIRCUIT JUDGE

THE INSTANT COMPLAINT WHICH ALLEGEDLY SEEKS REVIEW OF A STATE COURT JUDGMENT

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JOHN R. HAEGER, JR.	)	
	)	
Plaintiff	)	
	)	
v.	)	CIVIL ACTION NUMBER
	)	
Ms. WONDA EDMOND,	)	1 97- CV - 1862 - JEC
Child Support Receiver	)	
of DeKalb County	)	
DEKALB COUNTY, GEORGIA	)	
Dr. TERESSA F. HAEGER	)	
Ms. LINDA REEVES, former Clerk of the	)	
Superior Court of DeKalb County	)	
Ms. JEANNETTE ROZIER, Clerk of the	)	
Superior Court of DeKalb County	)	
Honorable HILTON FULLER,	)	
Administrative Judge, Fourth	)	
Judicial Administrative District of Georgia	)	
Honorable DANIEL M. COURSEY, JR.,	)	
Administrative Judge, Fourth	)	
Judicial Administrative District of	)	
Georgia	)	
Unidentified Administrative Judge	)	
of the Fourth Judicial Administrative	)	
District of Georgia whose term of	)	
office is to begin on or about July 1, 1997	)	
Mr. RICHARD JUGAR, Court Administrator	)	
Fourth Judicial Administrative District of Georgia)		
Ms. KATHLEEN WASCH,	)	
Assistant DeKalb County Attorney	)	

Appendix B

Mr. JONATHAN WEINTRAUB, DeKalb County Attorney)
)

Defendants

COMPLAINT

INTRODUCTION

This action is brought against State actors and a private individual acting in concert under color of law. Plaintiff alleges that Defendants requested, prepared, presented, and issued an income deduction order without according Plaintiff notice or hearing. In so doing, Defendants deprived Plaintiff of a Constitutional liberty interest in his selection of the financial intermediary through which he would pay child support and deprived Plaintiff of a Constitutional property interest, flowing from his right to contract, in knowledge of when his obligations were ultimately satisfied by payment to the recipient. Plaintiff alleges that both deprivations were committed without due process of law. In the course of issuing the order, Defendant Edmond engaged in the unlicensed practice of law and Defendants Fuller and Coursey, members of the Georgia Bar, supervised Edmond, an enforcement employee, in such unlicensed practice in violation of the Canons of Ethics of the Georgia Bar and in violation of the Georgia Constitution's Separation of Powers doctrine. Even the single arrearage relied upon to justify the order and denial of notice to Plaintiff of that arrearage was contrived by Defendant Edmond.

Plaintiff sought to have the improperly issued order set aside. Defendant Wasch, acting in her official capacity as an Assistant County Attorney, appeared and opposed Plaintiff's motion on behalf of Defendant Haeger. In so doing, Defendants DeKalb County, Weintraub, Wasch, and Fuller acted in concert to deprive Plaintiff of due process of law through deprivation of equal protection of the law by using, supervising use of, and permitting use of Defendant DeKalb County's Department of Law staff attorney, Defendant Wasch, to

represent Defendant Haeger, a party similarly situated to Plaintiff. Defendant Haeger did not appear at her own hearing nor did she engage a licensed attorney to represent her, even Defendant Wasch. Defendant Wasch acted on behalf of Defendant Haeger to oppose the Plaintiff without a showing of County authority to apply such resources and without any showing of the County's interest in the civil action.

Alternatively, if Defendants can show settled Georgia law indicating that income deduction orders may be issued in the manner of this order without notice, hearing, or showing of arrearage, Plaintiff asserts that such settled Georgia law violates U.S. Constitutional guarantees and is unconstitutional and void.

Plaintiff prays for relief in the form of compensatory and punitive damages, declaratory judgment, and injunctive relief.

I. JURISDICTION AND VENUE

1. Jurisdiction over the Defendants is conferred on this Court by 28 U.S.C. § 1331(a) and § 1343 which provides for jurisdiction in suits arising under the U. S. Constitution or laws of the United States. This Court's authority to render further relief in the form of declaratory judgment and injunctive relief where Federal jurisdiction is otherwise established is conferred by 28 U.S.C. § 2201 and § 2202.

2. Supplemental jurisdiction over the Defendants is conferred on this Court by 28 U.S.C.
§ 1367 which provides for jurisdiction over non-Federal claims that arise from the same case or controversy and derive from a nucleus of operative facts common with Plaintiff's Federal constitutional claim.

3. All of the Defendants residing in this State and all of the events giving rise to Plaintiff's claims having occurred within geographical boundaries of this District, this Court's venue is conferred by 28 § 1391(b)(1) and § 1391(b)(2).

II. PARTIES

4. Plaintiff John R. Haeger, Jr., (hereinafter "Plaintiff") at all times relevant herein lived in Gwinnett County, Georgia.

5. Defendant Wonda Edmond (hereinafter "Defendant Edmond") at all times relevant to this complaint served as the Child

Support Receiver of DeKalb County and supervisor of the DeKalb County Alimony and Support Unit. Edmond is being sued individually and in her official capacity.

6. Defendant Dr. Teressa F. Haeger (hereinafter "Defendant Haeger") at all times relevant herein lived in DeKalb County, Georgia.

7. Defendant Honorable Hilton Fuller (hereinafter "Defendant Fuller") served through June 30, 1995, as the Administrative Judge of the Fourth Judicial Administrative
District of Georgia, an elected public officer of a State judicial entity. Defendant Fuller is being sued individually.

8. Defendant Honorable Daniel M. Coursey, Jr. (hereinafter "Defendant Coursey"), beginning on or about July 1, 1995, as served as the Administrative Judge of the Fourth Judicial Administrative District of Georgia, an elected public officer of a State judicial entity. Defendant Coursey is being sued individually.

9. Defendant Unidentified Administrative Judge of the Fourth Judicial Administrative District of Georgia whose term of office is to begin on or about July 1, 1997, an elected public officer of a State judicial entity. Defendant Unidentified Administrative Judge is being sued only in his official capacity and only for prospective injunctive and declaratory relief.

10. Defendant Mr. Richard Jugar, (hereinafter "Defendant Jugar") at all times relevant to this complaint served as the Court Administrator of the Fourth Judicial Administrative District of Georgia, a state judicial entity. Defendant Jugar is being sued individually.

11. Defendant Jonathan Weintraub, (hereinafter "Defendant Weintraub") at all times relevant to this complaint served as the DeKalb County Attorney. Defendant Weintraub is being sued individually and in his official capacity.

12. Defendant Linda Reeves (hereinafter "Defendant Reeves") former Clerk of the DeKalb County Superior Court. Defendant Reeves is being sued individually and in her official capacity.

13. Defendant Jeannette Rozier (hereinafter "Defendant Rozier") Clerk of the DeKalb County Superior Court. Defendant Rozier is being sued in her official capacity for prospective relief only in the form of injunctive and declaratory relief.

14. Defendant DeKalb County, a person and a State actor for the purposes of this suit. At all times relevant to this complaint DeKalb County either directly or indirectly trained, controlled, made policy for, employed, supervised, compensated, enriched, or rewarded some or all of the other named Defendants. Defendant DeKalb County is being sued as a person.

III. FACTS

15. At all times relevant to this complaint, Defendant DeKalb County provided office space, telephone services, utilities, salaries and benefits, supplies, and computer services both to the Child Support Receiver of DeKalb County and her supervisees, all County employees, who work as a unit under the name Alimony and Support Unit of DeKalb County (hereinafter "ASU"), as well as to the Office of Child Support Collections (hereinafter "OCSC") and its employees

16. The OCSC and the ASU are located in Room 410 of the Callaway Building, 120 Trinity Avenue, Decatur, Georgia.

17. The ASU is authorized and organized under Administrative Order 86-8001 entered by Honorable Curtis Tillman.

18. There is no resolution of the governing body of DeKalb County as permitted by O.C.G.A. § 15-15-2(a) establishing an Office of the Receiver of Child Support or a position of child support receiver in accordance with that chapter of the Georgia Code.

19. At all times relevant herein Edmond was the Child Support Receiver of DeKalb County

20. At all times relevant herein Edmond was a DeKalb County employee.

21. According to Administrative Order 86-8001, the Child Support Receiver of DeKalb County is subject to supervision in matters of administrative management by Defendant Jugar, the Court Administrator.

22. The Child Support Receiver of DeKalb County is supervised in all other areas, appointed, and subject to removal by the Administrative Judge of the Fourth Judicial Administrative District, an elected officer of a State judicial entity.

23. Neither the ASU, the Child Support Receiver, nor any

ASU employee receives, records, or disburses child support funds.

24. The primary function of the ASU is to prosecute delinquent child support payers.

25. The ASU possesses no documents describing Defendant Edmond's training or experience in child support enforcement or in Chapters 9 or 19 of the Georgia Code.

26. A computer system was developed for and is operated by Defendant DeKalb County for child support record keeping.

27. The Child Support Computer system operated by Defendant DeKalb County is capable of recording dates, amounts, and payor account numbers for payments received.

28. The Child Support Computer system operated by Defendant DeKalb County is not capable of keeping records of child support obligations satisfied and unsatisfied as distinguished from payments received.

29. The Child Support Computer system operated by Defendant DeKalb County is not capable of keeping records of how child support payments are applied to specific court-ordered obligations

30. The Child Support Computer system operated by Defendant DeKalb County is not capable of keeping records of the amounts of child support payments that are applied to satisfy current and past-due (arrearage) obligations.

31. The Child Support Computer System operated by Defendant DeKalb County is incapable of providing any report of child support obligations satisfied and not satisfied.

32. The Child Support Computer System operated by Defendant DeKalb County is incapable of providing any report to the payor confirming negotiation by the recipient of a payment corresponding to a payment remitted by the payor.

33. The Fourth Judicial Administrative District has requested improvements to this computer software on multiple occasions.

34. For all times relevant, the OCSC accepted child support payments and disbursed those payments to child support recipients.

35. The ASU and OCSC are subject to the same rights and obligations as any other holder of commercial paper, and especially as to endorsements.

36. The ASU and OCSC are subject to Georgia law with regard to any fiduciary obligations that may arise in the course of their normal operations.

37. On March 30, 1995, Plaintiff purchased an American Express money order in the amount of $ 752 for use in payment of a payment due April 1, 1995.

38. That instrument, purchased in order to meet an April 1, 1995, child support obligation was never posted to Plaintiff's account by the OCSC or any DeKalb County child support receiving function.

39. Beginning in January, 1995, Plaintiff submitted several Open Record Requests in attempts to inspect documents relevant to a court action instigated by a false claim of non-payment of a May, 1993, child support payment made by Defendant Haeger and pursued against Plaintiff by Defendant Edmond.

40. As directed by Defendant Edmond, Plaintiff issued a similar Open Records Act request to Defendant Weintraub to request inspection of those documents.

41. Defendant Weintraub never permitted inspection or even responded.

42. On April 25, 1995, Defendant Edmond met with Plaintiff and Defendant Jugar in Jugar's office for a period exceeding one-half hour to permit Plaintiff to inspect and obtain copies of ASU documents as requested by Plaintiff in those Open Records Act requests.

43. If, on April 25, Plaintiff's money order had not been received by the OCSC, then Plaintiff would have been 25 days in arrears on his April 1 obligation.

44. Defendant Edmond has a duty to prepare a list of all payers in arrears over 15 days and submit a list of such payers in arrears "to the judges."

45. During the meeting in Defendant Jugar's office on April 25, 1995, Defendant Edmond did not notify Plaintiff of the alleged arrearage.

46. The ASU requires that payments be made using negotiable instruments, e.g. money orders, which represent the obligations of financial institutions, not obligations of the child support obligor.

47. Issuers of such instruments do not, as a matter of policy

report to the purchaser that the instrument has been presented for payment unless a special request is made..

48. As a matter of policy, neither the ASU nor the OCSC notifies payers of payments received.

49. As a matter of policy, neither the ASU nor the OCSC notifies payers of arrearages or payments not received until action is demanded by the recipient.

50. Consequently, payers receive no regular report, either from the OCSC, the ASU, or the issuer of the money order that would alert the payor that instruments remitted by mail in payment of child support obligations were not presented for payment.

51. The child support computer record keeping system operated by Defendant DeKalb County does not have provision for recording the serial numbers of negotiable instruments received from payers.

52. The Child Support Collection computer system only records amounts paid. It does not retain information sufficient to identify which specific instruments were received so that the ASU might divulge to the payor which specific instruments were received.

53. Defendant Haeger authorized Defendant Edmond to seek an income deduction order against Plaintiff.

54. Defendant Edmond did not notify Plaintiff of an alleged arrearage until she issued a (first and) "Final Notice" to Plaintiff dated June 8, 1995, alleged an arrearage of $ 1500.

55. The "Final Notice" was prepared from data provided by the Child Support Collection computer system operated by Defendant DeKalb County.

56. That notice did not indicate when payments had been received or which missed payments comprised the alleged $1500 arrearage.

57. The FINAL NOTICE threatened that "legal action will follow" if the arrearage was not cured.

58. After Plaintiff determined that an instrument purchased March 30 for a payment due April 1 was not cashed by the Child Support Collections Office, Plaintiff provided Defendant Edmond with a copy of the money order receipt.

59. On receipt of the FINAL NOTICE, Plaintiff endorsed a just-purchased money order for $ 752 "for credit to ASU account 3027 (John Haeger) against payment due April 1, 1995"

60. Plaintiff delivered the endorsed money order to the payment window of the Child Support Collections Office where Mattie Wyatt, the window clerk at the moment and a supervisee of Ashley Duncan, the Director of the Child Support Collections Office, told Plaintiff that the Child Support Collections Office did not accept "back-dated payments."

61. In her position as supervisor of the ASU, and during the relevant time period, Defendant Edmond employed no attorneys among her permanent or part time staff.

62. In seeking an income deduction order against Plaintiff, Defendant Edmond did not employ a licensed attorney.

63. In seeking an income deduction order against Plaintiff, Defendant Haeger did not appear at a hearing nor engage an attorney to represent her.

64. No attorney entered an appearance in seeking an income deduction order in Haeger v Haeger, Superior Court of DeKalb County, Civil Action No. 94-C-1333-5, on behalf of the Plaintiff, Defendant Haeger.

65. No petition as prescribed by O.C.G.A. § 19-6-32 in seeking an income deduction order was filed with the Clerk.

66. According to the "presented by" notation on the income deduction order filed with Defendant Reeves' supervisees, Defendant Edmond presented this income deduction order in the case Haeger v Haeger, Superior Court of DeKalb County, Civil Action No. 94-C-1333-5

67. The order contained no "prepared by" notation as required by Rule 36.1 of the Supreme Court's Rules of Superior Court.

68. Defendant Edmond prepared the order.

69. Defendant Edmond is not a licensed attorney in the State of Georgia.

70. No Bar number was shown under Defendant Edmond's name on the order.

71. Defendant Edmond was not and is not a party to the case Haeger v Haeger, Superior Court of DeKalb County, Civil Action No.

94-C-1333-5.

72. Defendant Reeves was at all times relevant the Clerk of DeKalb County Superior Court.

73. Defendant Reeves was at all times relevant a DeKalb County public officer.

74. Defendant Rozier is the current Clerk of the DeKalb County Superior Court.

75. Defendant Rozier is a DeKalb County public officer.

76. The Clerk's civil filing area has a specially marked tray labeled "child support filings."

77. Workers at the Clerk's civil filing window provide blank income deduction order forms on request.

78. Defendant Fuller executed an income deduction order against Plaintiff prepared by Defendant Edmond. The line above his signature and the Clerk's stamp indicated June 30, 1995 .

79. Plaintiff was not notified of the time, date, and place of a hearing on the income deduction order.

80. No hearing on Haeger v Haeger, Superior Court of DeKalb County, Civil Action No. 94-C-1333-5 appears on Defendant Fuller's calendar for the relevant time period.

81. An unknown worker (or workers) in the Clerk's office accepted and filed the income deduction order in the case styled Haeger v Haeger, Superior Court of DeKalb County, Civil Action No. 94-C-1333-5, which did not indicate by whom it was "prepared."

82. An unidentified worker in the Clerk's office placed in the Clerk's computer docket system a notation of the filing of the order.

83. Other unknown worker(s) in the Clerk's civil filing area responsible for quality control reviewed the income deduction order and permitted it to be copied onto the Clerk's permanent microfilm record system.

84. The order was filed at 3:45 PM on the last day of the term of court and the last day of Defendant Fuller's term of office as Administrative Judge.

85. Defendant Coursey took office as the Administrative Judge on the Monday following the filing of the order.

86. Upon assuming the office of Administrative Judge,

Defendant Coursey assumed supervision of Defendant Edmond for all matters other than "administrative management."

87. Thirty days after entry of the order, Defendant Edmond divulged to Plaintiff and Plaintiff's employer the existence of the order.

88. Defendant Edmond, acting both on behalf of the court and Defendant Haeger, provided Plaintiff with income-deduction-order-related notices prescribed in Georgia statutes which provide, among other things, for Plaintiff's right to request a "hearing"within 15 days after entry of the order..

89. Plaintiff's employer subsequently deducted $376 twice per month to meet Plaintiff's required $ 752 child support payment.

90. Without seeking concurrence of Plaintiff or written direction of the Court, Defendant Edmond issued a letter directing Plaintiff's employer to change from twice monthly ($ 752/month) to a bi-weekly deduction amount totaling either $ 694.16 or $ 1041.24 per month.

91. No court order was sought nor issued to authorize this revision to the deduction schedule.

92. Under this revised deduction schedule prescribed by Defendant Edmond, Defendant Edmond can show Plaintiff to be in arrears for 10 months of every year.

93. Plaintiff sought to set aside the income deduction order.

94 . Plaintiff sought review of the manner in which the income deduction order was issued and of the language of the order itself.

95. Plaintiff sought review of the absence of notice of hearing.

96. Plaintiff sought review of the absence of a hearing.

97. Plaintiff sought review of the existence of an arrearage.

98. Plaintiff sought review of the conformance of the order to the language prescribed in O.C.G.A. § 17-6-32.

99. In a hearing on December 18, 1995, on Plaintiff's Motion to Set Aside in the case styled Haeger v Haeger, Superior Court of DeKalb County, Civil Action No. 94-C-1333-5, Defendant Haeger did not appear.

100. Before transcription began, Defendant Wasch declined to share in the cost of the court reporter's takedown.

101. In a hearing on Plaintiff's Motion to Set Aside in the case

styled Haeger v Haeger, Superior Court of DeKalb County, Civil Action No. 94-C-1333-5, Defendant Haeger did not engage an attorney to represent her.

102. Over Plaintiff's objection that the County does not have the authority to represent anyone other than County employees, Defendant Fuller invited Defendant Wasch to act on behalf of Defendant Haeger with the words, "All right, let me hear from the County."

103. Defendant Edmond admitted under oath that she prepared the income deduction order sought to be set aside.

104. Defendant Fuller prevented Plaintiff from inquiring into Defendant Edmond's knowledge of the definition of practice of law included in the Georgia Code.

105. Defendant Wasch asserted that Defendant Edmond was not a party to the case styled Haeger v Haeger, Superior Court of DeKalb County, Civil Action No. 94-C-1333-5.

106. Defendant Wasch asserted that Defendant Edmond was acting in accordance with O.C.G.A. § 15-15-7

107. Defendant Wasch asserted that Defendant Edmond is a County Employee.

108. Defendant Wasch refused (without payment in advance) to comply with an Open Records Act request to inspect documents filed in accordance with O.C.G.A. § 15-18-70.

109. The "Final Notice" sent to Plaintiff and entered in evidence in the hearing contained no indication of a date, time, or place of a hearing.

110. The judgment of the state court emanating from this hearing did not address existence or adequacy of notice in issuance of the income deduction order

111. The judgment of the state court emanating from this hearing did not address existence or adequacy of hearing in issuance of the income deduction order

112. The judgment of the state court emanating from this hearing did not address compliance of the language of the income deduction order with that required by the Georgia statute.

113. Defendant Weintraub attended the hearing in which

Plaintiff sought to have the Income Deduction Order set aside and personally observed and supervised Defendant Waseh in her representation of Defendant Haeger.

114. In the course of the hearing, Defendant Fuller observed that "the County ought to give Ms. Edmond some legal assistance, and needs to do that."

115. After the hearing but before Defendant Fuller left the bench, Defendant Weintraub approached the bench to offer the County's legal assistance to Ms. Edmond.

116. On March 12, 1997, Plaintiff observed Ms. Edmond in Judge Michael Hancock's courtroom sitting and standing at a table before the bar normally occupied by parties and attorneys, averring as to matters of fact on behalf of a child support recipient without benefit of the oath of a witness, based on documents marked "presented by" Wonda Edmond.

IV. FEDERAL CAUSES OF ACTION

117. Plaintiff asserts a liberty interest in a Constitutional right to contract. Plaintiff further asserts that as a result of numerous previous instances of exercise of that liberty interest, wherein he directed a financial intermediary to pay amounts of money to the order of Defendant Haeger, with such drafts annotated to indicate that the purpose of the payment was child support, certain property interests were shown to exist and flowed to him. Among those property interests are:

a) the right to obtain written notice from the financial intermediary confirming that a payment in the intended amount of the child support payment was in fact paid by the financial intermediary (a checking statement),

b) the right to return to Plaintiff by the financial intermediary of endorsed negotiable instruments indicating to whose order the amount was paid (canceled checks), and

c) Plaintiff's right to inquire of the financial intermediary by telephone as to whether a specific draft had been presented for payment and to learn the status of the payment in question during the course of the call.

118. Plaintiff asserts that all of these liberty and property interests provided Plaintiff with peace of mind through the knowledge that the payments he intended to make were actually paid to the intended beneficiary and that his court-ordered obligation had been satisfied. Plaintiff has been deprived of that peace of mind and confidence as a result of deprivation of liberty and property interests described below.

119. Plaintiff suffered damage resulting from the acts and omissions to act described below, all of which contributed to deprivation to Plaintiff of the above described U.S. Constitutional liberty and property interests through improper issuance of an income deduction order and refusal to set that order aside.

Appendix B

FIRST FEDERAL CAUSE OF ACTION

DEPRIVATION OF DUE PROCESS OF LAW--Deprivation of Liberty Interest without Notice

120. All allegations set forth in paragraphs 1 through 119 are incorporated herein by reference. By issuance of an income deduction order without notice, Defendants Haeger, Edmond, and Fuller deprived Plaintiff of his liberty interest in his ability to exercise his Constitutional right to contract by constraint on his right to select a financial intermediary to pay out funds to meet his child support obligations. Notice must consist of more than a mere threat that legal action must follow.

121. Plaintiff is entitled to notice in any action where liberty interests are at stake. Notice must include a date, time, and place of a future hearing. The OCSC, the designated financial intermediary, speaking through Defendant Edmond, asserts that it has no obligation to Plaintiff whatsoever--that they works only for the recipient.

SECOND FEDERAL CAUSE OF ACTION

DEPRIVATION OF DUE PROCESS OF LAW--Deprivation of Liberty Interest without Hearing

122. All allegations set forth in paragraphs 1 through 121 are incorporated herein by reference. By issuance of an income deduction order without hearing, Defendants Haeger, Edmond, and Fuller deprived Plaintiff deprived of his liberty interest in his ability to exercise his Constitutional right to contract by selecting a financial intermediary to pay out funds to meet his child support obligations. Defendants Haeger, Fuller, Jugar, and Edmond's actions damaged Plaintiff as described above.

123. Plaintiff is entitled to a hearing in any action where liberty interests are at stake.

THIRD FEDERAL CAUSE OF ACTION

DEPRIVATION OF DUE PROCESS OF LAW--Failure to comply with due process of law as established in state statutes

124. All allegations set forth in paragraphs 1 through 123 are incorporated herein by reference. Plaintiff was deprived of

Constitutional liberty and property interests in a manner which violated due process of law as prescribed by Georgia statute.

125. Defendants Fuller and Defendant Jugar, as a matter of policy and acting under color of law, permitted Defendant Edmond, also acting under color of law to engage in the unlicensed practice of law O.C.G.A. 15-19-51(a)(1) & (a)(6), in violation of Plaintiff's reasonable legal expectation that, as a matter of due process of law, Plaintiff would not be subjected to legal process prepared by natural persons who are not licensed to practice law in the State of Georgia. 126. Likewise, Plaintiff is entitled to be free from legal action taken against him
through an employee or agent who is not a licensed attorney, O.C.G.A. 15-19-52, was violated by Defendants Haeger and Edmond. Defendant Edmond was acting under color of law in accordance with the policies established by Defendants Fuller, and Jugar. Defendant Edmond prepared papers incident to actions in Superior Court O.C.G.A. 15-19-50(1). Defendants Haeger, Fuller, Jugar, and Edmond's actions damaged Plaintiff as described above.

127. Additionally, Defendant Fuller, by taking judicial notice of an order prepared by one he knew not to be a licensed attorney, assisted a non-attorney in unlicensed practice of law in contravention of the Canon 3 of the Canons of Ethics of the Georgia Bar.

128. Defendant Haeger and her *de facto* advocate, Defendant Edmond, failed to file the petition requesting that an income deduction order be issued as required by Georgia statute. Defendant Fuller signed the income deduction order in the absence of the statutorily required petition.

129. Defendant Haeger and her *de facto* advocate, Defendant Edmond, armed only with reports from a computer system that both she and Defendant Fuller were aware was unable to record or report on obligations satisfied or unsatisfied, failed to show evidence of the arrearage required by Georgia statute. Defendant Fuller signed the income deduction order in the absence of a showing of arrearage required by Georgia statute. Defendants Haeger, Fuller, Jugar, and Edmond's actions damaged Plaintiff as described above.

FOURTH FEDERAL CAUSE OF ACTION
DEPRIVATION OF DUE PROCESS OF LAW--Deprivation of Property Interest without Notice

130. All allegations set forth in paragraphs 1 through 129 are incorporated herein by reference. By issuance without notice of an income deduction order requiring payment through the DeKalb County ASU, Plaintiff was deprived of his property interest in his right to receive confirmation from his selected financial intermediary that his child support payments had indeed been paid to the intended recipient, thus satisfying that amount of a court-ordered obligation.

131. Prior to this deprivation, Plaintiff, by his exercise of his right to contract and to select a financial intermediary, had enjoyed property interests in regular confirmations that the payment he directed his intermediary to pay to the order of Defendant Haeger had been paid to Defendant Haeger. Without demand or request, Plaintiff received monthly statements of payments made along with negotiated commercial paper items (canceled checks) showing endorsement by Defendant Haeger. Upon demand, Plaintiff had the right to inquire by telephone as to the status of drafts issued but not yet reported as paid. Answers to those telephone inquiries were available during the course of the phone call. In depriving Plaintiff of these property interests, Defendants Haeger, Fuller, Jugar, and Edmond's actions damaged Plaintiff as described above.

FIFTH FEDERAL CAUSE OF ACTION
DEPRIVATION OF DUE PROCESS OF LAW--Deprivation of Property Interest without Hearing

132. All allegations set forth in paragraphs 1 through 131 are incorporated herein by reference. By issuance without hearing of an income deduction order requiring payment through the DeKalb County ASU, Plaintiff was deprived of his property interest in his right to receive statements from a financial intermediary that payments applicable to his obligation had been transferred to the intended recipient as well as his rights to receive endorsed instruments showing that the payment had been made and the right to inquire as to the status

of payments by telephone. Defendants Haeger, Fuller, Jugar, and Edmond's actions damaged Plaintiff as described above.

SIXTH FEDERAL CAUSE OF ACTION

DEPRIVATION OF DUE PROCESS OF LAW--Deprivation of Equal Protection of the Law

133. All allegations set forth in paragraphs 1 through 132 are incorporated herein by reference. Plaintiff was deprived of Equal Protection of the Law when Defendants DeKalb County, Weintraub, Wasch, and Fuller acted in concert to permit, supervise, oversee, and allow a DeKalb County Assistant Attorney to act on behalf of a party to a civil suit and against another party to a civil suit. In the face of a challenge, no showing of authority of a County attorney to represent Defendant Haeger was made. No showing of County interest in the case was attempted. Defendant Haeger and Plaintiff were similarly situated. Defendants DeKalb County, Weintraub, Wasch, Haeger, and Fuller's actions damaged Plaintiff as described above.

134. Defendant Wasch appeared in court on behalf of a party (Defendant Haeger) who had not engaged her services in the manner prescribed in the Canons of Ethics of the Georgia Bar, one of several existing rules and understandings that describe due process of law in Georgia. At the beginning of the hearing, Plaintiff placed Defendant Fuller on notice of his position that there was no one present who was authorized to represent Defendant Haeger on the motion. Defendant Fuller then permitted Defendant Wasch to act on behalf of Defendant Haeger without any showing of such authorization. Defendants DeKalb County, Weintraub, Wasch, and Fuller damaged Plaintiff as described above.

SEVENTH FEDERAL CAUSE OF ACTION

DEPRIVATION OF DUE PROCESS OF LAW--Application of an Unconstitutional State Law

136. All allegations set forth in paragraphs 1 through 135 are incorporated herein by reference. O.C.G.A. § 19-6-32 provides that an income deduction order may be issued if the payor is one month in

arrears. It also limits the defenses against issuance of the order to exclude any question of fact as to the existence of the arrearage. Taken together, these code sections provide for deprivation of liberty and property interests based on an unsubstantiated allegation of arrearage.

137. To the extent that a state court judgment that the income deduction order was "proper" rests on Defendant Fuller's and Defendant Wasch's belief that O.C.G.A. 19-6-32 permits deprivation of liberty interests and issuance of an order without petition, notice, hearing, or showing of arrearage, that state statute violates the U.S. Constitution.

138. To the extent that Defendants Edmond, Fuller, Coursey, and Wasch believe that O.C.G.A. 19-6-32 permits a court to act in a manner more like that of an administrative hearing, providing for *ex parte* action without showing of emergency, followed by a hearing with no prescribed format, rules of procedure, or rules of evidence, with no rules at all other than a limitation which precludes inquiry into the essential matter of fact, the existence of an arrearage, that state statute violates the U.S. Constitution and is void.

EIGHTH FEDERAL CAUSE OF ACTION

DEPRIVATION OF DUE PROCESS OF LAW--Violation of Georgia Constitutional Separation of Powers Doctrine

139. All allegations set forth in paragraphs 1 through 138 are incorporated herein by reference. Until the end of his term of office, Defendant Fuller, the Administrative Judge of the Fourth Judicial Administrative District and an elected statutory officer of a state judicial entity, supervised Defendant Edmond, an enforcement employee, in all matters other than "administrative management" while she sought this income deduction order on behalf of Defendant Haeger.

140. At the beginning of the next term of court, Defendant Coursey succeeded to the position of Administrative Judge and supervised Edmond as she engaged in notification procedures both on behalf of the court and on behalf of Defendant Haeger. Through the entire relevant time period, Defendant Jugar, a statutory employee of a state judicial entity, supervised Defendant Edmond as to matters of "administrative management."

141. Edmond is not authorized to perform adjudicatory or

adjudicatory support functions; she is only authorized to perform enforcement and advocacy (executive branch) functions. Supervision of employees performing executive branch functions by officers and an employee of a state judicial entity violates Georgia's Separation of Powers doctrine. This violation contributes to the appearance of impropriety whenever Defendant Edmond appears in court before her direct supervisor or before a member of the District Council of the Fourth Judicial Administrative District (all of the Superior Court judges of the Stone Mountain Circuit), her indirect superiors.

142. The reason for this particular aspect of the separation of powers doctrine is to organizationally separate the accuser and their advocate from the finder of fact and law. And while it may be true that this system has not been challenged in its ten years of existence, each Administrative Judge who has given thought to the organizational aspects of his relationship to the Child Support Receiver of DeKalb County and to his and the Child Support Receiver's functions, has certainly been aware of the risks of this organizational arrangement and surely has breathed a sign of relief on relinquishing the office, that the music did not stop while he/she held the office of Administrative Judge.

143. Certainly Defendant DeKalb County's County Attorney was aware of the problem as early as January, 1995. Otherwise, he would not have been so steadfast in his refusal to permit inspection of documents requested by Plaintiff under the Georgia Open Records Act or so vocal at the December 18 hearing in Defendant Fuller's courtroom in asserting the existence of the (non-existent) O.C.G.A. § 15-15-2(a) resolution of the governing body of the County.

144. Defendant Fuller's failure as an Administrative Judge to rectify the violation of the state Separation of Powers doctrine led, in part, to the improprieties described in Plaintiff's causes of action above. Defendants DeKalb County, Haeger, Fuller, Jugar, and Edmond's actions damaged Plaintiff as described above.

NINTH FEDERAL CAUSE OF ACTION

DEPRIVATION OF DUE PROCESS OF LAW--Failure to Train

145. All allegations set forth in paragraphs 1 through 144 are incorporated herein by reference. Plaintiff's rights to due process

secured to him by the Fifth and Fourteenth Amendments to the U.S. Constitution were violated by Defendants Fuller, Coursey, and/or Defendant Jugar when, as a matter of policy, and acting under color of law, they failed in their duty to train their supervisee, Defendant Edmond, in Chapters 9 and 19 of the Georgia Code, knowledge of which is essential to the lawful performance of her duties. Defendant Reeves, as a matter of policy, and acting under color of law, failed to train her civil filing section employees to enforce compliance with O.C.G.A. § 9-11-1, i.e., that pleadings in civil actions must be signed by the party or their attorney and Rule 36.1 of the Georgia Uniform Rules of Superior Court which requires an indication on its face of who prepared every pleading filed. . Defendants Fuller, Coursey, Jugar, and Reeves' actions and omissions to act damaged Plaintiff by ultimately denying Plaintiff of U.S. Constitutional liberty and property interests through improper issuance of an income deduction order prepared by an untrained Defendant Edmond, which complaint was accepted for filing by equally untrained unidentified employees of the Clerk.

TENTH FEDERAL CAUSE OF ACTION
DEPRIVATION OF DUE PROCESS OF LAW--Failure to Adequately Supervise

146. All allegations set forth in paragraphs 1 through 145 are incorporated herein by reference. In failing to train as a matter of policy, Defendants Fuller and Coursey and/or Defendant Jugar, created a climate whereby Defendant Edmond felt free to use her powers capriciously in her excessive zeal to impose this income deduction order, regardless of whether Plaintiff had committed an infraction which, according to state statutory law, justified such an order. Thus Defendants Fuller, Coursey, and Jugar, acting under color of law and in concert with Defendant Edmond, denied Plaintiff of the "fundamental fairness" and "protection of general law" that are secured to Plaintiff through his right to due process of law contained in the Fifth and Fourteenth Amendments to the U. S. Constitution.

ELEVENTH FEDERAL CAUSE OF ACTION:
DEPRIVATION OF DUE PROCESS OF LAW
Improper Preparation and Acceptance of Notice

147. All allegations set forth in paragraphs 1 through 146 are incorporated herein by reference. Acting in accordance with established policy, unidentified employee(s) of the Clerk of Superior Court knowingly accepted and filed papers and made entries to the Clerk's docket concerning papers that were marked as "presented by" a person who was clearly not a party to the case and whom they knew or should have known not to be a licensed attorney O.C.G.A. 15-19-50(1), pleadings that were not signed by either the party or the party's attorney, Rule 36.4, Uniform Rules of Superior Court. Those unidentified employee(s) of the Clerk of Superior Court thus deprived Plaintiff of his reasonable legal expectation that, as a matter of due process of law, pleadings that do not meet the minimum standards established by the Georgia Code and the Uniform Rules of Superior Court would not be accepted for filing. Plaintiff is entitled to expect that Defendant Reeves and her employees, based on the training she provided these employees, and her policies and procedures, will enforce Rule 36.1 of the Uniform Rules of Superior Court and thus protect Plaintiff against filings of pleadings prepared by barrators and other untrained, unknowledgeable, unskilled, and unlicensed practitioners. Defendants Reeves and Edmond's actions and omissions to act damaged Plaintiff as described above. Without the assistance of Defendant Reeves' unidentified employees, Defendant Edmond would have been forced to comply with Georgia law and refrain from preparing papers incident to actions in court.

V. SUPPLEMENTAL CAUSES OF ACTION
FIRST SUPPLEMENTAL CAUSE OF ACTION
Violation of the Open Records Act

148. All allegations set forth in paragraphs 1 through 147 are incorporated herein by reference. In response to Plaintiff's Open Records Act requests, Defendant Wasch demanded payment not

authorized by Open Records Act as a precondition to inspection of documents. Plaintiff was damaged by her refusal to comply with the Act and to provide Plaintiff with confidence in operation of government.

SECOND SUPPLEMENTAL CAUSE OF ACTION

Failure to Provide a Minimally Sufficient Computer Record Keeping System

149. All allegations set forth in paragraphs 1 through 148 are incorporated herein by reference. Defendant DeKalb County acted with wilful disregard for the Constitutional rights of child support payors in:

1) Providing grossly inadequate child support collection record keeping computer services to the OCSC and ASU units, and

2) Continued to pay for ASU and OCSC operating expenses while refusing to improve the computer record keeping system, thus coercing Defendants Fuller, Coursey, Jugar, and Edmond to continue to use that system when each member of this group of Defendants including Defendant DeKalb County, were well aware of, or should have been well aware of, the various shortcomings of this system, specifically its inability to function as a child support record keeping system capable of maintaining simple records of obligations satisfied and obligations unsatisfied.

150. Defendant DeKalb County thus encouraged Defendant Edmond to use the only child support record keeping system available to her. Thus encouraged by Defendant DeKalb County, Defendant Edmond, when necessary, testified under oath in DeKalb County Superior Court as to child support arrearages using the only record keeping reports available to her, reports which Defendant Edmond knew provided absolutely no basis for allegations that child support obligations were unsatisfied and in arrears.

151. That system recorded only payment information, not records of obligations satisfied and unsatisfied. Defendant DeKalb County's inadequate support of child support recordkeeping software,

combined with Defendant Edmond's negligent use of information from an information system she knew incapable of storing any information at all about obligations paid and unpaid, ultimately damaged Plaintiff as described above.

THIRD SUPPLEMENTAL CAUSE OF ACTION

Deprivation of Timely Statutory Notice of Right to Hearing

152. All allegations set forth in paragraphs 1 through 151 are incorporated herein by reference. Edmond, acting for both the court and Defendant Haeger, withheld notice of Plaintiff's right to request a hearing within 15 days after entry of the order that was required by O.C.G.A. § 19-6-32 until thirty days after the order was entered. If procedures existed for such a hearing, the notices would have provided a (questionable) right to hearing to review the court non-proceeding.

DEMAND FOR JURY TRIAL

153. Plaintiff demands trial by jury.

VI. RELIEF SOUGHT

154. Plaintiff prays for relief in the form of compensatory and punitive damages as provided in Title 42 U.S.C. § 1983.

155. Plaintiff further prays the Court to grant relief in the forms of a declaratory judgment and further necessary or proper relief as provided in Title 28 U.S.C. §2201 and § 2202.

COMPENSATORY AND PUNITIVE DAMAGES

156. WHEREFORE Plaintiff demands judgment against the Defendants jointly and severally as follows:

A) Compensatory damages for this wanton and wilful deprivation of Plaintiff's right to due process of law and Defendants' wilful and wanton violations of Plaintiff Constitutional rights and privileges and of State law in the amount of $3,000,000.

B) Punitive damages in an amount necessary to reasonably deter such conduct in the future. Plaintiff requests punitive damages in the amount of $ 3,000,000.

DECLARATORY JUDGMENT

157. As one required to continue to pay child support through the DeKalb County ASU, Plaintiff further seeks a declaratory judgment under the authority conferred on this Court by Title 28 U.S.C. § 2201 that:

A) Provisions of O.C.G.A. § 19-6-32 that provide for issuance of an income deduction order without notice or hearing violate U. S. Constitutional guarantees and are unconstitutional and void.

B) Provisions of O.C.G.A.§ 19-6-32 that bar challenge to issuance of an income deduction order on the basis of whether or not an arrearage exists or existed, when the statutory basis for the order requires the existence of the arrearage, violate Constitutional protections against taking of property without just cause. Such a provision violates U. S. Constitutional guarantees and is unconstitutional and void.

C) There is no provision in Georgia law or any rule promulgated by the Georgia Supreme Court in regulation of the practice of law that permits any natural person who is not a licensed attorney to act in representation of any other natural person.

D) The Clerk of Superior Court has a duty to decline to accept papers which fail to conform with Rule 36.1 of the Uniform Rules of Superior Court, in particular, papers which fail to indicate by whom they are prepared.

E) The Clerk of Superior Court has a duty to exercise due diligence in identifying and declining to accept papers which fail to indicate that they are prepared by a party to a case or by a licensed attorney engaged by the party and a duty to train all civil filing workers in the same duty.

F) Trial judges, as members of the Georgia Bar, have a duty to assist in preventing the unlicensed practice of law and hence to decline to take judicial notice of non-parties who are known to the judge not to be licensed attorneys when such natural persons attempt to take actions on behalf of another natural person in a matter of law.

G) Any child support record keeping system whose output is relied upon as a basis for child support enforcement actions must be capable of storing the dates and amounts of obligations that have become due, the date and amounts of funds received that are applied to those

obligations, and some method of identifying which payment (among the many of often-identical amounts) was received, e.g., the unique identifying number of the third-party instrument remitted;

H) Further, such a system must be capable of printing reports as to whether specific obligations have or have not been satisfied for use as a basis for child support enforcement actions and for information to child support payers and payees.

I) Further, such a computer system and the manual procedures surrounding it, as a matter of good financial operating practice, must facilitate reconcilement of gross receipts to the total of payments posted to individual payers accounts as well as reconcilement of gross disbursements to the total of payments posted to individual payers accounts.

J) The child support record keeping computer system operated by Defendant DeKalb County and computer record keeping services provided to the ASU and the OCSC is incapable of performing those aforementioned basic functions

K) Further, any financial operation such as a child support receiver must be audited regularly to assure the accuracy of individual accounts.

L) The Child Support Receiver of DeKalb County, the DeKalb County Alimony and Support Unit, and the OCSC perform solely executive branch functions, i.e., collection and disbursement of child support payments and prosecution of delinquent child support payers. Their current form of organization wherein the Child Support Receiver, the ASU and the Office of Child Support Collections employees report to, and are supervised by, appointed by and subject to removal by an officer of a state judicial entity violates the Separation of Powers doctrine of the Georgia Constitution.

INJUNCTIVE RELIEF

158. As authorized in Title 28 U.S.C. § 2202, Plaintiff prays for injunctive relief as follows:

A) All State actor Defendants be permanently enjoined from permitting persons over whom they have supervisory control and who are known by them not to be licensed attorneys to:

i) prepare papers incident to actions in any court, or

ii) take actions in court on behalf of others

B) All State actor Defendants be compelled to develop, and submit to this Honorable Court for approval, written policies and procedures barring all persons over whom they have supervisory control and who are known by them not to be licensed attorneys from:

I) preparing papers incident to actions in any court or

ii) taking actions in court on behalf of others.

C) Upon approval, all State actor Defendants be compelled to impose on all persons over whom they have supervisory duties, responsibilities, and obligations the approved policies and procedures.

D) All State actor Defendants be permanently enjoined from taking judicial notice of or accepting for filing papers prepared by persons who are known by them not to be licensed attorneys.

E) All State actor Defendants be permanently enjoined from taking judicial notice of child support arrearage reports based on data produced by the child support computer record keeping system operated by Defendant DeKalb County until such system is capable of reporting on specific obligations satisfied and unsatisfied.

F) Defendant DeKalb County and all State actor Defendants be permanently enjoined from operating, contributing to the operation of, or providing any computerized child support payment record keeping system services that:

I) fail to maintain a complete record of each child support obligation satisfied and unsatisfied (as distinguished from child support payments remitted) OR

ii) fail to provide the payor and the data entry operator with the capability to allocate child support payments to satisfaction of specific obligations at the option of the payor and to report to the payor such allocations OR

iii) fail to provide for the child support payor a report of funds received by the recipient of his/her child support payment (to include amount, date, and check number) OR

iv) fail to provide the capability to accept and

comply with payers instructions as to application of payments to specific obligations.

G) All State actor defendants be permanently enjoined from operating, contributing to the support of, or maintaining any form of supervisory cognizance over any child support organization (or employees thereof) that:

I) does not reconcile its gross child support receipts to its records of payments applied to individual payor accounts

ii) does not reconcile its child support disbursements to its records of payments applied to individual payor accounts

iii) handles individual child support remittance and disbursement accounts and for which such individual accounts are not regularly audited by a private auditor or a governmental unit authorized under Georgia law to audit such financial operations.

H) Defendants Unidentified Administrative Judge and Jugar and all of their successors to the positions of Administrative Judge and Court Administrator be permanently enjoined from employing, supervising, appointing, or removing employees who perform executive branch functions, and in particular, child support collection and enforcement.

Respectfully submitted,

_____

John R. Haeger, Jr.
Pro Se

5464 Laurel Lane
Lilburn, Georgia 30247
770-717-1885

Appendix C

UNITED STATES DISTRICT COUNT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL E. TINDALL

Plaintiff

Case No. 98-CV-73896-DT

WAYNE COUNTY FRIEND OF COURT, by: JOSEPH A SCHEWE, DIRECTOR OF LEGAL SERVICES, and ALAN E. SKROK, STAFF ATTORNEY and ASSISTANT FRIEND OF COURT; WAYNE COUNTY SHERIFF'S DEPARTMENT, by: ROBERT FICANO, SHERIFF; WAYNE COUNTY CIRCUIT COURT, FAMILY DIVISION, by: KIRSTEN FRANK KELLY, PRESIDING JUDGE, MICHAEL F. SAPALA, CHIEF JUDGE,

HONORABLE DENISE PAGE HOOD

Defendants

MEMORANDUM OPINION AND ORDER

3. FACTS

Plaintiff Michael F. Tindall filed the instant suit under 42 U.S.C. § 1983 claiming that his constitutional rights are being violated by the Defendants' enforcement of Plaintiff's child support obligations. Plaintiff claims the following: 1) that M.C.L.A. § 552.628 provides for an unconstitutional suspension of an occupational license (Count III; 2) that the show cause orders issued by the Friend of the Court and Wayne County Circuit Court are illegal (Count IV); 3) that the bench warrants

issued by Defendants are illegal (Count V); and 4) that the referee and judicial hearings are illegal (Count V).[1]

Plaintiff was divorced by a Judgment of Divorce entered in December 1991 by the Wayne County Circuit Court. From 1992 through present, Plaintiff claims he has been the subject of about eight show cause orders issued by the Friend of the Court during referee and judicial hearings. Plaintiff claims he has been illegally incarcerated without proper notice, hearing, opportunity to defend or be represented by counsel. Plaintiff states that he has orally and in writing objected to the procedures before the Wayne County Circuit Court, by complaint for Superintending Control in the Michigan Court of Appeals and by complaint for Superintending Control in the Michigan Supreme Court. These complaints were denied.

This matter is not before this Court on the various Defendants' Motion to Dismiss and Plaintiff's Motion for Summary Judgment. Responses were filed and a hearing was held on the matter.

II. ANALYSIS

A. Subject Matter Jurisdiction

1. Abstention Factors

Although not addressed by the parties, the Court must first determine whether it has subject matter jurisdiction over Plaintiff's Complaint. Plaintiff alleges Section 1983 claims in his complaint. Inasmuch as Plaintiff is seeking federal review of a State Court Order, this court has no subject matter jurisdiction over such a claim.

A United States District Court has no authority to review final judgments of a state court judicial proceedings. Review of such judgments may be had in the United States Supreme Court. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983). To the extent that a District Court is requested to review a State Court's

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[1] Count I, entitled :Jurisdiction" does not state a claim but merely sets forth the jurisdictional hasis of Plaintiff's Complaint. Count II entitled "General Allegations," also does not state a specific claim but merely sets forth the factual basis of Plaintiff's claims found in Counts III through V.

order, the District Court lacks subject matter jurisdiction over those complaints. Lower federal courts possess no power whatever to sit in direct review of state court decisions. If the constitutional claims presented to a United states District Court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's complaint, then the district court is in essence being called upon to review the state-court decision, which the district court may not do, Id. At 483. To the extent that a general challenge to the constitutionality of a certain rule is alleged, the District Court does have subject-matter jurisdiction. Id. At 482-483. The Feldman case involved a constitutional challenge to a state's regulation of lawyers. The Supreme Court in Feldman in determining whether or not a constitutional claim is inextricably intertwined to a state court's order in a judicial proceeding stated:

> . . . We have recognized that state supreme courts may act in a nonjudicial capacity in promulgating rules regulating the bar. (Citations omitted). Challenges to the constitutionality of state bar rules, therefore, do not necessarily require a United States district court to review a final state-court judgment in a judicial proceeding. Instead, the district court may simply be asked to assess the validity of a rule promulgated in a non-judicial proceeding. If this is the case, the district court is not reviewing a state-court judicial decision. In this regard 28 U.S.C. § 1257 does not act as a bar to the district court's consideration of the case and because the proceedings giving rise to the rule are nonjudicial the policies prohibiting United States district court review of final state-court judgments are not implicated. United States district courts, therefore, have subject matter jurisdiction over state bar rules, promulgated by state courts in nonjudicial proceedings in a particular case. They do not have jurisdiction, however, over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. Review of those decisions may be had only in this (U.S.

Supreme Court) Court. 28 U.S.C. § 1257.

Feldman, 460 U.S. at 485-486. Federal courts require that a plaintiff raise his federal constitutional claims at the state level before the federal courts will review a state court's decision. The Supreme Court has noted the competence of state courts to adjudicate federal constitutional claims. Feldman, 460 U.S. at 483. Principles of equity, comity and federalism in certain circumstances counsel abstention in deference to ongoing state proceedings. Younger v. Harris, 401 U.S. 37 (1971). In Younger, the Supreme Court held that a federal court should not interfere with a pending state criminal proceeding except in the rare situation where an injunction in necessary to prevent great and immediate injury, Id.at 44. The Supreme Court has applied abstention to state civil proceedings Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. 423 (1982). The Supreme Court has enumerated a three-part test to determine abstention:

1) Whether the proceedings involved constitute an ongoing state judicial proceeding;
2) Do the proceedings implicate important state interests; and
3) Is there an adequate opportunity in the state proceedings to raise constitutional challenges ?

Id. at 432.

2. Ongoing State Judicial Proceeding

In this case, the underlying proceeding involved is enforcement of Plaintiff's child support obligations under the divorce judgment entered by the Wayne County Circuit Court. If a state action is pending when the federal complaint was filed, the federal action must be dismissed. Hicks v. Miranda, 422 U.S. 332

(1975). Whether there is a pending state judicial proceeding, the Supreme Court has held that "[a] judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposedly already to exist.: New Orleans Public Service, Inc. v. Council of the City of New Orleans, 491 U.S. 350, 370 (1989). So long as state court judicial review is available, Younger abstention applies, Fieger v. Thomas, 74 F.3d 740, 745 (6th Cir. 1996).

The first requirement of the Younger abstention has been met. There is no dispute that the state proceedings in this case involve the enforcement of Defendant's child support obligations under a divorce judgment entered by the Wayne County Circuit Court. Plaintiff has not shown that he has appealed any of the orders entered by the Wayne County Circuit Court. Plaintiff did file a Complaint of Superintending Control with the Michigan Court of Appeals and with the Michigan Supreme Court. The requests for Superintending Control sought a stay of the proceedings before the Wayne County Circuit Court and to determine the fitness of Judge William Giovan to preside over the case. (Exs. E and F to Plaintiff's Complaint). Both courts denied Plaintiff's Complaint for Superintending Control. In Michigan, superintending control is an extraordinary power that may be invoked with the plaintiff demonstrates the defendant's failure to perform a clear legal duty and the absence of an adequate legal remedy. In re Recorder's Court Bar Ass'n v. Wayne Circuit Court, 443 Mich. 110,134 (1993). Superintending control orders are used to determine "if the inferior tribunal, upon the record made, had jurisdiction, whether or not it exceeded that jurisdiction and proceeded according to law." In re People v. Burton, 429 Mich. 133,139 (1994). The review by the Michigan appellate courts on a superintending control complaint is limited to questions of law and is not available when the plaintiff has an adequate legal remedy through an appeal. Id. When an appeal is available, the complaint for an order of superintending control must be dismissed. M.C.R. 3.302((D)(2) (sic). Appeal procedures to the Michigan Court of Appeals are governed by M.C.R. 7.200 *et seq.* And to the the Michigan Supreme Court by

M.C.R. 7.300 *et seq.*

The Court finds that there is currently a pending state judicial proceeding before the Wayne County Circuit Court involving Plaintiff's child support obligations under a divorce judgment. Plaintiff has not taken advantage of the appeal process to further adjudicate his disagreements with the Circuit Court's rulings, other than applying for superintending control which is not a substitute for the appellate process.

3. Important State Interests

The second prong of the abstention analysis has also been met. The state proceedings before the Wayne County Circuit Court–child support enforcement issues and domestic relations law–involve a paramount state interest. Mann v. Conlin, 22 F.3d 100,105 (6th Cir. 1994); Parker v. Turner, 626 F.2d 1,3 (6th Cir. 1980).

4. Adequate Opportunity to Raise Constitutional Issues

The third requirement for abstention–that there is an adequate opportunity in state proceedings to raise constitutional challenges–has also been met. Abstention is appropriate unless state law clearly bars the interposition of the constitutional claims. Moore v. Sims, 442 U.S. 415, 425-426 (1979). The burden rests on the federal plaintiff to show that the state procedural law barred presentation of the Plaintiff's claims. Id. at 432.

As discussed above, Plaintiff has the opportunity to challenge the constitutionality of the procedures through the Michigan Appellate Courts. Plaintiff has not shown that he has challenged Defendants' procedures based on constitutional reasons before the Wayne County Circuit Court–in the form of motions–let alone before the Michigan appellate courts. Plaintiff's Complaints for Superintending 'control do not address the constitutional challenges to the procedures before the Wayne County Circuit Court nor the constitutionality of M.C.L.A. § 552.628 which authorizes the Michigan circuit courts to suspend an occupational license where an individual is in arrearage under a child support order exceeding three months. Plaintiff, an attorney, is capable of

presenting constitutional issues before the Michigan courts, as evidenced by the documents he has submitted before this Court. There has been no showing that the rules and procedures established in Michigan bar Plaintiff from presenting his constitutional claims before the Michigan courts.

B. Exceptions to Abstention

1. Plaintiff's claims of constitutional violations

A federal court normally orders a complaint dismissal in the three requirements for Younger abstention are met unless a plaintiff can show an exception from abstention such as bad faith, harassment, or flagrant unconstitutionality. Fieger, 74 F.3d at 750. The Younger Court has stated that "the possible unconstitutionality of a statute 'on its face' doe not in it self justify an injunction against good-faith attempts to enforce it," especially absent "any showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief." Younger, 401 U.S. at 54. Any challenged statute must be "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph and in whatever manner and against whomever an effort might be made to apply it. Id at 53-54.

Plaintiff claims that he has shown that Defendants' actions to enforce child support orders were made in bad faith. Plaintiff states that Defendants are acting in bad faith by blindly and blatantly ignoring constitutional principles established by the federal constitution which are recognized in Michigan. Plaintiff address three instances where Defendants have violated his constitutional rights.

The first instance is that the Friend of the Court personnel, with the Circuit Court's complicity–issues show cause orders which are pre-printed, pre-signed by the Circuit Court Judge, without review by Mr. Joseph A Scheve for the Friend of the Court or a Circuit Court judge. Plaintiff states that he does not specifically challenge the constitutionality of the Friend of the Court and Enforcement Acts but that because the Friend of the Court does not

follow the rules and statutes, his Fourth Amendment rights in procedural due process have been violated.

The second instance in which Plaintiff claims a violation of his constitutional rights is that the Friend of the Court personnel and the Circuit Court do not follow the rules and procedures in handling contempt proceedings. Plaintiff claims that he was not given alternatives to incarceration under M.C.L.A. §§ 552.635 and 552.637 nor given notice as to the standard of proof the contemnor must meet to rebut the statutory presumption under M.C.L.A. § 552.633. Plaintiff claims that if the Friend of the Court is not satisfied with any offers by the party in arrears, a hearing is then immediately conducted. Plaintiff states that the referee hearing is conducted on hearsay statements from the Friend of the Court attorney, no evidence or testimony is taken, no cross-examination is allowed, and the rules of evidence are not applied or enforced nor findings of fact or conclusions are made, as required by M.C.R. 3.215(E). If either party objects to the referee's oral decision, the parties are ordered to immediately appear before a Wayne County Circuit Court judge. The Friend of the Court Attorney than orally recites to the judge what he claims the referee decided earlier. Neither the judge nor the parties are provided a written referee recommendation. Neither the parties nor the Friend of the Court attorney is sworn to testify before the judge. The rules of evidence are not followed by the judges nor cross-examination allowed. The alleged contemnor is not advised by the judge of his right to counsel nor the existence of statutory alternatives to incarceration. Plaintiff claims the hearing usually lasts less than ten (10) minutes and usually results in the incarceration of the alleged contemnor.

The third instance of violation of Defendant's constitutional rights is that the Circuit Court may restrict Plaintiff's ability to work under M.C.L.A. § 552.628. This statute allows the Circuit Court to suspend a professional license if child support obligations are not met. Plaintiff argues that M.C.L.A. § 552.628 violates his substantive and procedural due process rights.

Plaintiff submitted documentary evidence and an affidavit to support his arguments. Defendants submitted no documentary

evidence to rebut Plaintiff's factual allegations that the Friend of the Court personnel and the Circuit Court do not follow the statutory provisions or the court rules. Defendants declined to submit any evidence or testimony from the Court at the hearing.

2. Pre-printed, Pre-signed Order to Show Causes and Bench Warrants

As noted previously, Defendants have not submitted any evidence to rebut Plaintiff's evidence that the Friend of the Court, without review by a Circuit Court judge, issues a bench warrant at will. Plaintiff has presented sufficient evidence to support his allegation that the Friend of the Court personnel, with the Circuit Court's complicity, issues show cause orders which are pre-printed, pre-signed by the Circuit Court judge.

Plaintiff submitted bench warrants issued by the Circuit Court which he claims are preprinted and issued without review and without the actual signature of a Circuit judge. Attached to Plaintiff's Complaint is a transcript of a May 14, 1997 Show Cause Hearing where the Friend of the Court attorney, Shelly A. Payne, admits to issuing a bench warrant for August 21, 1996. (5/14/97 hrg., p. 4) When the Court asked Ms. Payne, "who authorized the bench warrant." Ms. Payne responded, "I did." (5/14/97 hrg., p. 9). The court then asked, "Can you do [sic] on your own ?" Ms. Payne responded, "Yes, I do that all the time. There's a failure to appear the Friend of the Court has the power to issue a bench warrant for failure to appear." (5/14/97 hrg., p. 9)

M.C.L.A. § 552.501 *et seq.* and M.C.R. 3.208 set forth the Friend of the Court's powers and duties. M.C.R. 3.208(B) regarding enforcement states as follows:

> (B) Enforcement. The friend of the court is responsible for initiating proceedings to enforce an order or judgment for support, visitation, or custody.
>
> (1) If a party has failed to comply with an order or judgment, the friend of the court *may petition for*

an order to show cause why the party should not be held in contempt.

(2) The order to show cause must be served personally or by ordinary mail at the party's last known address.

(3) The hearing on the order to show cause may be held no sooner than seven days after the order is served on the party. If service is by ordinary mail, the hearing may be held no sooner than nine days after the order is mailed.

(4) If the party fails to appear in response to the order to show cause, *the court may issue an order for arrest.*

M.C.R. 3.208(B) (italics added), M.C.L.A. § 552.631(1) stat as follows

(2) If any person has been ordered to pay support under a support order and fails or refuses to obey and perform the order, and if an order of income withholding is inapplicable or unsuccessful, a recipient of support or the office of the friend of the court may commence a civil contempt proceeding by *filing in the circuit court a petition for an order to*

> *show cause* why the delinquent payer should not be held in contempt. If the payer fails to appear in response to an order to show cause, *the court may issue a bench warrant* requiring that the payer be brought before the court without unnecessary delay to answer and plead that neglect or refusal.

M.C.L.A. § 552.631(1) (italics added),

Based on the unrebutted evidence submitted by Plaintiff, the Court finds that the Plaintiff has submitted sufficient evidence to support his claim that it is the Wayne County Friend of the Court's practice to issue orders to show cause and bench warrants using pre-printed forms with the judges's signature already affixed without the judge's review and approval as required by M.C.R. 3.208(B) and M.C.L.A. § 552.631. Plaintiff's Complaint and affidavit stating that no Circuit Court judge reviews or actually signs the show cause orders and the bench warrants is unrebutted. No evidence to the contrary was submitted by Defendants even after the Court invited Defendants to do so.[2] Plaintiff has met the exception to abstention on the ground that Defendants violated Plaintiff's due process rights under the Fourth Amendment, guaranteed by the Fourteenth Amendment, by failing to follow the procedures set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631. An individual's right to liberty is at stake when contempt proceedings are initiated by the Friend of the Court. The Friend of the Court's actions, without actual approval by the Circuit Court judges, are outside the statutory mandate of M.C.L.A. § 552.631 and M.C.R. 3.208(B).

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2 Although the Court must view the motion in the light most favorable to the nonmoving party, where "the moving party has carried its burden under Rule 56(e), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986).

3. Contempt Proceedings

Plaintiff has not submitted sufficient evidence to support his allegations that the Friend of the Court personnel and the Circuit Court do not follow the rules and procedures in handling contempt proceedings. Plaintiff has also not submitted sufficient evidence to show that Plaintiff was not given alternatives to incarceration under M.C.L.A. §§ 552.635 and 552.637 nor given notice as to the standard of proof the contemnor must meet to rebut the statutory presumption under M.C.L.A. § 552.633. Plaintiff has failed to submit evidence to show that the rules of evidence are not followed by the referee of the Circuit Court.

M.C.L.A. § 552.633 allows the court to find a payer in contempt "if the court finds that the payer is in arrears and if the court is satisfied that the payer has the capacity to pay out of currently available resources all or some portion of the amount due under the support order." Upon finding a payer in contempt. The court has the discretion to enter an order which includes committing the payer to the county jail. M.C.L.A. § 552.633(1)(a)-(c), M.C.L.A. § 552.635(1) allows the court to find a payer with the capacity to pay arrearage in contempt "if the court is satisfied that by the exercise of diligence the payer could have the capacity to pay all or some portion of the amount due under the support order and that the payer fails or refuses to do so." Upon finding a payer in contempt, the court has the discretion to enter an order, including committing the payer to the county jail. M.C.L.A. § 552.635(2)(a)-(c). M.C.L.A. § 552.637 sets forth the provisions of the order of commitment pursuant to M.C.L.A. § 552.633 and 552.635. Nothing in these three statutes require a judge t notify a payer as to the alternatives which may be found in these statutes.

Plaintiff has not submitted any evidence, other than Plaintiff's conclusory allegations, to support his allegations that the rules of evidence are not followed during the hearings before the friend of the court, the referee or the circuit court judge. Disagreements with a judge's findings under M.C.L.A. § 552.633, 552.635 and 552.637 and any disputed evidentiary issues before the Friend of the Court, the Referee of the Circuit Court judge may be

brought before the state and appellate courts. None of these allegations are "flagrantly and patently violative of express constitutional prohibitions" as required by the Younger abstention doctrine. Younger 401 U.S. 53-54. The Court will abstain from ruling on these issues.

4. M.C.L.A. § 552.628.

The Court will not address the issue that M.C.L.A. § 552.628 is unconstitutional because Plaintiff has not been subjected to the provisions of that statute. Plaintiff has not shown that there is a subject matter controversy regarding the constitutionality of M.C.L.A. § 552.628. As the Supreme Court stated in Younger, "the possible unconstitutionality of a statute 'on its face' does not in itself justify an injunction against good-faith attempts to enforce it."–Here, there has been no allegation on the constitutionality of M.C.L.A. § 552.628 because Plaintiff has not shown any attempt to enforce the statute.

C. Anti-Injunction Statute

Defendants Michael F. Sapala and Kirsten Frank Kelly claim that 28 U.S.C. § 2283 expressly forbids injunctive relief against judicial officers. 28 U.S.C. § 2283 states:

> A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

The Supreme Court in Mitchum v. Foster 407 U.S. 225, 242 (1972), found that Section 1983 is an explicit exception to the anti-injunction statute. The Sixth Circuit expressly adopted those Supreme Court findings in Martin-Marietta Corp. v. Bendix Corp. 690 F.2d 558,562 (6th Cir. 1982).

Because Plaintiff filed a suit in this Court pursuant to 42 U.S.C. § 1983, the anti-injunction statute, 28 U.S.C. § 2283, is inapplicable to the instant case. However, for the reasons set forth below, injunctive relief is not available to Plaintiff.

D. Absolute Immunity

Alternatively, the Wayne County Circuit Court judges and the Friend of the Court employees claim they are absolutely immune from suit. Plaintiff agrees that judicial officers and the friend of the court are absolutely immune from claims for monetary damages under Section 1983 while acting in their official capacities. Plaintiff does not seek damages. Plaintiff seeks a declaration that the enforcement hearings and procedures conducted by the friend of the court and its referees are unconstitutional.

It is well settled that judicial officers are absolutely immune from claims for damages under Section 1983. Imbler v. Pachtman, 424 U.S. 409 (1976). Friend of the Court employees are also absolutely immune from claims from damages whether acting as judicial designees, including referees or as prosecutors, such as Friend of the Court attorneys seeking enforcement of child custody and support orders. Watts v. Burkhart, 978 F.2d 269 (6th Cir. 1972). In Pulliam v. Allen, 466 U.S. 522, 541-42 (1984), the Supreme Court held that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in his/her judicial capacity. Equitable relief against a judge, as with any other defendant, is limited to cases where there is "a showing of an inadequate remedy at law and of a serious risk of irreparable harm . . . " Pulliam, 466 U.S. at 537.

On October 19, 1996, Public Law 104-317, the Federal Courts Improvement Act of 1996, was signed into law. Section 309 of the Act amended 42 U.S.C. § 1983 as follows:

> [I]n any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted *unless a declaratory decree was violated or declaratory relief was unavailable.*

42 U.S.C. § 1983 (italics added): Kamper v. Scullin 989 F.Supp. 194 (N.D., N.Y. 1997). Absolute immunity bars not only a Section 1983 claim for damages but with the amended language the immunity extends to a Section 1983 claim for injunctive relief, unless a declaratory decree was

violated or declaratory relief is unavailable. Montero v. Travis 171 F.3d 757,761 (2nd Cir. 1999); Hili v. Sciarrotta, 140 F.3d 210,215 (2nd Cir. 1998); Ackerman v. Doyle, F.Supp.2d 265,272 (N.D. N.Y. 1999)

The legislative history of P.L. 104-317 clearly indicates that Congress intended to protect judicial officers from Section 1983 claims for injunctive relief, as well as damages. The Senate Report on the bill states:

> This section restores the doctrine of judicial immunity to the status is occupied prior to the Supreme Court's decision in Pulliam v. Allen, 466 U.S. 522 (1984) . . .
>
> In Pulliam, the Supreme Court broke with 400 yeras of common-law tradition and weakened judicial immunity protections. The case concerned a State magistrate who jailed an individual for failing to post bond for an offense which could be punished only by a fine and not incarceration. The defendant filed an action under 42 U.S.C. 1983, obtaining both an injunction against the magistrate's practice of requiring bonds for nonincarcerable offenses, and an award of costs, expressly holding that judicial immunity is not a bar to injunctive relief in section 1983 actions against a State judge acting in a judicial capacity, or to the award of attorney's fees under the Civil Rights Attorney Fees Award Act, 42 U.S.C. 1988.

Those statutes are now amended to preclude awards of costs and attorney's fees against judges for acts taken in their judicial capacity, and to bar injunctive relief unless declaratory relief is inadequate.

Subsection 311(c) [Senate version of Section 309] amends 42 U.S.C. 1983 to bar a Federal judge from granting injunctive relief against a State judge, unless declaratory relief is unavailable of the State judge violated a declaratory decree . . .

This section does not provide absolute immunity for judicial officers. Immunity is not granted for any conduct "clearly in excess" of a judge's jurisdiction, even if the act is taken in a judicial capacity. Moreover, litigants may still seek declaratory relief, and may obtain injunctive relief if a declaratory decree is violated or it otherwise unavailable. Section 311 restores the full scope of judicial immunity lost in Pulliam and will go far in eliminating frivolous and harassing lawsuits which threaten the independence and objective decision-making essential to the judicial process.

P.L. 104-317, Senate Report No. 104-366, Sept. 9, 1996.

It is clear that Congress amended Section 1983 to limit suits against judicial officers absent a showing that the judicial officer violated a declaratory decree or there is not declaratory decree available. In this case, there is no allegation that the judicial officers have violated a declaratory decree. Plaintiff sought declaratory relief, in addition to injunctive relief, which is available pursuant to 28 U.S.C. § 2201. Since there is no allegation that the judicial officers lin this case have violated a declaratory decree, absolute judicial immunity bars Plaintiff's request for injunctive relief pursuant to 42 U.S.C. § 1983. Based o n the amendment to 42 U.S.C. § 1983, it appears that the anti-injunction statute, 28 U.S.C. § 2283 now applies to 42 U.S.C. § 1983 claims with the limitations set forth in Section 1983. Plaintiff's claim for injunctive relief is denied.

C. Declaratory Relief

A. Five Factors

As noted previously, in addition to injunctive relief, Plaintiff has sought declaratory relief. 28 U.S.C. § 2201 provides in pertinent part:

> In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declarations, where (sic) or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Appendix C

The Declaratory Judgment Act "is an enabling Act, which confers discretion on the courts rather than an absolute right upon the litigant." Allstate Ins. v. Mercier, 913 F.2d 273,277 (6th Cir. 1990). In the Sixth Circuit, five factors are generally considered and weighed before declaratory relief may be granted:

> 1) whether the declaratory action would settle the controversy; 2) whether the declaratory action would serve a useful purpose in clarifying legal relations in the issue; 3) whether the declaratory remedy is being used merely for the purpose of "procedural fencing" or "to provide an arena for a race for res judicata"; 4) whether the use of a declaratory action would increase friction between our federal and state courts and improperly encroach upon state jurisdiction; and 5) whether there is an alternative remedy which is better or more effective.

Id.

1. First Factor / Settle the Controversy

The only claim remaining in this case is whether Defendants vilated Plaintiff's due process constitutional rights with the Friend of the Court personnel, without the Circuit Court's review, issued show cause orders which are pre-printed and pre-signed by the Circuit Court judge but are not reviewed pursuant to M.C.R. 3.208(B) and M.C.L.A. § 552.631. Plaintiff claims a liberty interest created by the state court rules and statutes under the due process clause. Plaintiff does not claim that M.C.R. 3.208(B) and M.C.L.A. § 552.631 are unconstitutional but that Defendants failed to follow the procedures outlines under the rule and statute.

A liberty interest due process claim was considered by the Supreme Court in Jackson v. Virginia, 443 U.S. 307 (1979). The Supreme Court noted:

> [A] person cannot incur the loss of liberty for an offense without notice and a meaningful opportunity to defend . . . .[T]he most elemental of due process rights [is] freedom from a wholly arbitrary deprivation of liberty.

Id. at 319. A violation of a state's formal procedure does not in and of itself implicate constitutional due process concerns. Levine v. Torvik, 986 F.2d 1506, 1515 (6th Cir. 1993). "A state cannot be said to have a federal due process obligation to follow all of its procedures; such a system would result in the constitutionalizing of every state rule, and would not be administrable." Id. The proper inquiry is "whether the state's procedures have passed federal constitutional muster, not whether there was an error in the state's applying its own law. Id. To establish a due process claim villation under the constitution, it must be shown that "the state court's application of its constitutionally adequate standard was so erroneous as to raise an independent due process violation." Id.

Based on the unrebutted evidence submitted by Plaintiff, he has established that Defendants' application of the state procedural rules violated his due process right. When show cause orders and bench warrants for a person's arrest are issued against a person, that person is facing a loss of liberty which the state cannot impose without notice and a meaningful opportunity to defend. The rules set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631 were enacted to protect a person's right to proper notice and to have independent review of the show cause order and bench warrant, other than that of Friend of the Court personnel who prosecute arrearage claims. The issuance of show cause orders and bench warrants on pre-printed form with the judge's signature already affixed to the form at the discretion of Friend of the Court personnel

and without subsequent review by a judge violates Plaintiff's due process rights under the Fourth Amendment, guaranteed by the Fourteenth Amendment.

The Court's declaration that Defendants' failure to follow procedures set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631 violated Plaintiff's due process rights settles the controversy between Plaintiff and the Defendants as to whether Plaintiff's due process rights have been violated.

2. Balancing of the Remaining Factors

The Court's declaration clarifies the legal relations in issue. The Court's declaration establishes Defendants' duties toward Plaintiff and shows that Defendants should meaningfully follow the procedures set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631 before issuing show cause orders or bench warrants.

There may be some showing that Plaintiff is using this action for the purpose of "procedural fencing" in that Plaintiff may wish to avoid child support payments ordered by the state court. The Court has made it clear that the Court will not disturb any findings by the Circuit Court on the issue of child support payments. The sole issue before this Court is the due process constitutional violation noted above.

The Court does not find that declaratory relief would increase friction between our federal and state courts and improperly encroach upon state jurisdiction. This Court's sole focus is whether Defendants have violated Plaintiff's due process rights by failing to meaningfully follow the procedures set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631. The Court makes no finding as to the appropriateness of the child support order issued and any prosecution to collect under the order so long as Plaintiff's due process rights are protected.

No other alternatives have been presented by Defendants as to how to correct the violation of Plaintiff's due process rights. The only apparent way to correct the due process violation is to follow the procedures set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631. The Court's finding that Defendants have failed to follow these procedures should put Defendants on notice that the

procedures they have been following violate Plaintiff's due process rights. The Circuit Court was made aware that Friend of the Court personnel issued the show cause orders and bench warrants without review by a judge. Defendants did not produce any evidence to rebut Plaintiff's evidence.

Weighing the factors involved, the Court finds that a declaratory judgment should be issued in this action. The Court declares that the Friend of the Court's practice to issue show cause orders and bench warrants without actual review by a judge and Defendants' failure to follow the procedures set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631 violate Plaintiff's due process rights.

II CONCLUSION

For the reasons set forth above, the Court declares that the Friend of the Court's practice to issue show cause orders and bench warrants without actual review by a judge and Defendants' failure to follow the procedures set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631 violate Plaintiff's due process rights. As to the remaining claims, the Court abstains from considering those issues.

Accordingly,

IT IS ORDERED that Defendant's Sajala's Motion to Dismiss (Docket No. 12, filed September 25, 1998) is GRANTED IN PART and DENIED IN PART as more fully set forth above.

IT IS FURTHER ORDERED that Defendant Kelly's Motion to Dismiss (Docket No. 13, filed September 28, 1998) is GRANTED IN PART and DENIED IN PART as more fully set forth above.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment (Docket No. 15, filed September 28, 1998) is GRANTED IN PART and DENIED IN PART as more fully set forth above.

IT IS FURTHER ORDERED that Plaintiff's Motion to Supplement Complaint (Docket No. 27, filed March 24, 1999) is MOOT.

IT IS FURTHER ORDERED that Defendant Wayne County Friend of the Court's Motion to Quash Finding Subpoena and for Protective Order (Docket No. 32, filed April 2,1999) is MOOT

IT IS FURTHER ORDERED that Defendants Sapala and Kelly's Motion to Quash Finding Subpoena and for Protective Order (Docket No. 36-1 and 36-2, filed April 5,1999) is MOOT

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel Production of Documents and Deposition of Subpoenaed Witness (Docket No. 37, filed April 6,1999) is MOOT

IT IS FURTHER ORDERED that Declaratory Judgment is entered in favor of Plaintiff as to the due process claim on Defendants' application of the rules and procedures set forth in M.C.R. 3.208(B) and M.C.L.A. § 552.631 only as more fully set forth above.

IT IS FURTHER ORDERED that the Court ABSTAINS as to the Plaintiff's remaining claims and those claims are DISMISSED.

IT IS FURTHER ORDERED that Plaintiff's request for injunctive relief is DENIED.

Denise Page Hood
United States District Judge

DATED: September 20, 1999.

APPENDIX D – RELEVANT STATUTES, ORDERS, AND DUE PROCESS UNDERSTANDINGS

DUE PROCESS OF LAW

14th Amendment, U. S. Constitution, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

JUDICIAL ADMINISTRATIVE DISTRICTS AND ADMINISTRATIVE JUDGESHIPS CREATED

O.C.G.A. § 15-5-2. **Judicial administration district created; boundaries.**

Ten judicial administration districts of more or less equal population in each district are created within this state. The boundaries of the ten judicial administration districts, to the extent possible, shall follow the boundaries existing on July 1, 1976, of the ten United States congressional districts. The Governor, after conferring with the superior court judges, shall establish by July 1, 1976, the original boundaries of each judicial administration district pursuant to this Code section. The ten administrative judges provided for tin this article may provide for any necessary changes in the boundaries of such districts not inconsistent with this Code section.

O.C.G.A. § 15-5-3. District councils created; composition; presiding officer; meeting rules.

A district council for each judicial administration district is created composed of all judges of the superior courts within the district. The superior court judge in each district having seniority in numbers of years as a superior court judge shall serve as presiding officer of the district council. Each district council shall meet at least once a year and as often as required to discuss administrative problems peculiar to the district and otherwise to perform its duties. Each district council shall establish rules, by majority vote, which shall cover the right to call additional meetings and procedures for handling the administrative work of the council.

O.C.G.A. § 15-5-4. Election of district administrative judge; term; removal.

The judges of each district council shall elect a superior court judge or a senior judge of the superior court to serve for a two-year term as an "administrative judge" within the district. The district administrative judge shall serve until his successor is elected and qualified; provided, however, that the district administrative judge may be removed at any time by a two-thirds vote of all judges comprising the district council. The duties of the administrative judge shall be additional duties which shall not be construed to diminish his other responsibilities.

O.C.G.A. § 15-5-5. Duties of an Administrative Judge

The duties and authority of each district administrative judge shall be as follows:

(1) To request, collect, and receive information from the courts of record within his district pursuant to uniform rules promulgated by the ten administrative judges; and

(2) To authorize and assign any superior court judge within the district to sit on any type of case or to handle other administrative or judicial matters within the district; provided, however, that the

assignment shall be made with the consent of the assigned judge and with the consent of the majority of the judges of the circuit to which the assignment is made and that the assignment shall be made subject to rules promulgated by the district council by a majority vote of the superior court judges within the district.

Canons of Ethics of The State Bar of Georgia

Rule 3-103.

(CANON 3)

A Lawyer Should Assist in Preventing the Unauthorized Practice of Law

Directory Rule 3-101. Aiding Unauthorized Practice of Law

(A) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.

ESTABLISHING CHILD SUPPORT RECEIVER POSITION PARTIAL DELEGATION OF SUPERVISORY AUTHORITY

Administrative Order 86-1001 of the Stone Mountain Judicial Circuit

In the Superior Court of the
Stone Mountain Judicial Circuit
DeKalb County, Georgia

ADMINISTRATIVE ORDER

The Superior Court of the Stone Mountain Judicial Circuit creates and establishes an Alimony and Support Unit to process and monitor the collection and disbursement of court ordered alimony and/or support payments.

Appendix D

1. Collection and Disbursement of Child Support, Alimony, and Property Settlement Payments. The Alimony and Support Coordinator of DeKalb County, shall establish an Alimony and Support Unit which shall consist of one or more employees charged with the responsibility of collecting and distributing child support, alimony and property division payments payable in cash installments, received by the Alimony and Support Unit from any other source and for such purposes as may be authorized by the Superior Court Judges. The Alimony and Support Unit Coordinator shall have supervisory and administrative control over the personnel and activities of the Alimony and Support Unit, including but not limited to the method of collecting, disbursing and accounting for alimony and support payments, except as may be provided herein. The Coordinator shall report to the Court Administrator for administrative management purposes.

2. Date of Operation of Alimony and Support Unit. The Alimony and Support Unit of the Superior Court will be operational on or about 1 August 1985. On this date the unit will be capable of receiving and disbursing alimony and child support funds in accordance with the policies established in this order.

3. Payment of Funds to the Alimony and Support Unit. Based upon the inherent power of the Court to obtain information relating to the compliance of its orders and to enforce its orders, and upon request from either party, with approval of the assigned trial judge, final decrees entered in divorce, alimony, child support, support and maintenance modification of child support, alimony or contempt actions may provide that payments required to be made in the form of alimony and child support be made by the party required to make any such payments, directly to the Alimony and Support Unit rather than to the recipient of the funds.

4. Incorporation in Court Decrees. Orders of this Court providing for payments in these actions set forth above shall provide that payments shall be made in accordance with the provisions of this order, which shall by reference be incorporated in and made a part of this decree.

5. Administrative Charge. There will be cost incurred in collecting and distributing funds received by the Alimony and Support Unit, and it is within the inherent power of the Court to provide an administrative charge sufficient to cover the cost of collecting and disbursing the support payments. From all funds received by the Alimony and Support Division, there shall be included an additional administrative charge of five per cent (5%), not to exceed $2.00 for child support payments and ten per cent (10%), not to exceed $5.00 for alimony payments, which shall be paid by the Alimony and Support Unit into the general fund of the County.

6. Modification. When parties have been ordered to make payments to the Alimony and Support Unit, payments shall continue in that manner until such time as the final decree is modified. The final decree may be modified upon the filing of a motion requesting that the decree be modified.

7. Notice to Payor. Upon the payor's failing to comply with an order incorporating this rule, the payor shall be notified by the Alimony and Support Unit by mail that unless within fifteen (15) days payment is received, his non-compliance shall be reported to the assigned judge of the Superior Court and an order issued for the payor to show cause why the payor should not be held in contempt, including the possibility that the cost of the action may be assessed by the court against the defendant/respondent.

8. Notice to the Court. The Alimony and Support Unit shall notify the Judges of the Superior Court of those payors who have failed to comply with orders of this Court, giving to the Court addresses, necessary payment information, and when notice of non-compliance was given to the payor.

9. Order Issued on Motion of the Court. Upon receipt from the Alimony and Support Unit of information indicating non-compliance by a payor, the Court may issue an order directing the payor to appear before the Court to show cause, if any he can, why the payor should not be held in contempt of court. When the case is filed with the Clerk's office, the filing fee, plus service cost, will be temporarily waived. If the Court determines that the Defendant/Respondent is in contempt, court costs to include filing and service fees may be assessed against the Defendant/Respondent. These fees will be immediately paid to the Alimony and Support Unit for transfer to the Clerk of Superior Court. Attorneys fees will not be collected and disbursed by the Alimony and Support Unit.

10. Parties Required to Attend Hearings. The Defendant/ Respondent is required to be in attendance at the contempt hearing unless his attendance is waived by the Court.

The above and foregoing is hereby adopted as an Order of this Court by the Superior Court Judge of DeKalb County.

DONE AND ORDERED this 27th day of May 1986, NUNC PRO TUNC 16 JULY 1985.

CURTIS V. TILLMAN, CHIEF JUDGE
STONE MOUNTAIN JUDICIAL CIRCUIT

Appendix D

POLICY: APPEARANCE/REPRESENTATION AT HEARING IS OPTIONAL

Extracts from a Fourth Judicial Administrative District publication: "DEKALB COUNTY SUPERIOR COURT ALIMONY AND SUPPORT UNIT"

"The petitioner is encouraged to attend the hearing even though his or her presence is not required."

"The petitioner has an option of having her or her own attorney in attendance."

DEFINITION OF PRACTICE OF LAW PROHIBITION OF UNLICENSED PRACTICE

O.C.G.A. § 15-19-50. "Practice of law" defined.

The practice of law in this state is defined as:

(1) Representing litigants in court and preparing pleadings and other papers incident to any action or special proceedings in any court or other judicial body.

(2) Conveyancing;

(3) The preparation of legal instruments of all kinds whereby a legal right is secured;

(4) The rendering of opinions as to the validity or invalidity of titles to real or personal property;

(5) The giving of any legal advice; and

(6) Any action taken for others in any matter connected with the law.

O.C.G.A. § 15-19-51. Unauthorized practice of law forbidden.

(a) It shall be unlawful for any person other than a duly licensed attorney at law:

(1) To practice or appear as an attorney at law for any person other than himself in any court of this state or before any judicial body;

(2) To make it a business to practice as an attorney at law for any person other than himself in any of such courts;

(3) To hold himself out to the public or otherwise to any person as being entitled to practice law;

(4) To render or furnish legal services or advice;

(5) To furnish attorneys or counsel;

(6) To render legal services of any kind in actions or proceedings of any nature;

(7) To assume or use or advertise the title of "lawyer," "attorney at law," or equivalent terms in any language in such a manner as to convey the impression that he is entitled to practice law or is entitled to furnish legal advice, services, or counsel; or

(8) To advertise that either alone or together with, by, or through any person, whether a duly and regularly admitted attorney at law or not, he has, owns, conducts, or maintains an office for the practice of law or for furnishing legal advice, services, or counsel; or

(b) Unless otherwise provided by law or by rules promulgated by the Supreme Court, it shall be unlawful for any corporation, voluntary association, or company to do or perform any of the acts recited in subsection (a) of this Code section.

O.C.G.A. § 15-19-52. Lawful acts by parties involved; banking advice; legal instruments; title papers.

Nothing contained in this article shall prevent any corporation, voluntary association, or individual from doing any act or acts set out in Code Section 15-19-50 to which the persons are a party; but, in preparing and filing affidavits in attachments and prosecuting such proceedings, it shall be unlawful for the plaintiffs to act through any agent or employee who is not a duly licensed

attorney at law. Moreover, no bank shall be prohibited from giving any advice to its customers in matters incidental to banks or banking; nor shall any person , firm, or corporation be prohibited from drawing any legal instrument for another person, firm, or corporation, provided it is done without fee and solely at the solicitation and the request and under direction of the person, firm, or corporation desiring to execute the instrument. Furthermore, a title insurance company may prepare such papers as it thinks proper or necessary in connection with a title which it proposes to insure, in order, in its opinion, for it to be willing to insure the title, where no charge is made by it for the papers.

O.C.G.A. § 5-6-35. Procedure for applying for Appeal to the Georgia Court of Appeals

(a) Appeals in the following cases shall be taken as provided in this Code section:

. . . . . .

(2) Appeals from judgments or orders in divorce, alimony, child custody, and other domestic relations cases including, but not limited to, granting or refusing a divorce or temporary or permanent alimony, awarding or refusing to change child custody,
or holding or declining to hold persons in contempt of such alimony or child custody judgment or orders;

. . . . . .

(b) All appeals taken in cases specified in subsection (a) of this Code section shall be by application in the nature of a petition enumerating the errors to be urged on appeal and stating why the appellate court has jurisdiction. The application shall specify the

order or judgment being appealed and, if the order or judgment is interlocutory, the application shall set forth, in addition to the enumeration of errors to be urged, the need for interlocutory appellate review.

. . . . . .

(f) The Supreme Court or the Court of Appeals shall issue an order granting or denying such an appeal within 30 days of the date on which the application was filed.

BAR TO EX PARTE COMMUNICATIONS & PUBLIC STATEMENTS BY COURT PERSONNEL

GEORGIA CODE OF JUDICIAL CONDUCT
(Promulgated by the Georgia Supreme Court)

CANON 3B(7) Judges shall accord to every person who has a legal interest in a proceeding or that person's lawyer, the right to be heard according to the law*. Judges shall not initiate or consider ex parte communications, or consider other communications made to them outside the presence of the parties concerning a pending or impending proceeding, except that:

CANON 3B(7)(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(I) the judge reasonably believes that no party will gain procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all parties of the substance of this ex parte communication and allows an opportunity to respond.

CANON 3B(7)(c) Judges may consult with court personnel whose function it to aid the judge in carrying our the judge's adjudicative responsibilities, or with other judges.

CANON 3B(9) Judges shall not, while a proceeding is pending or impending in any court, make any public comment* that might reasonably be expected to affect its outcome or impair the fairness or make any non-public comment that might substantially interfere with a fair trial or hearing. Judges shall require* similar abstention on the part of court personnel* subject to their direction and control. This subsection does not prohibit judges from making public statements in the court of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.